

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH DAKOTA

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In re:

HULTGREN CONSTRUCTION, LLC

EIN: 38-3953795

Debtor.

Case No. 18-40329

Chapter 11

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**PLAN AS CONFIRMED**

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Dated: June 3, 2019

## TABLE OF CONTENTS

ARTICLE I DEFINITIONS AND INTERPRETATION .....	1
1.1.    DEFINED TERMS .....	1
1.2.    INTERPRETATION .....	7
1.3.    TIME PERIODS .....	8
1.4.    EXHIBITS AND SCHEDULES .....	9
ARTICLE II COMPROMISES AND SETTLEMENTS .....	9
2.1.    APPROVAL OF SETTLEMENT AGREEMENT .....	9
2.1.    FACTUAL BACKGROUND REGARDING COMPROMISE .....	9
2.2.    THE SETTLEMENT AGREEMENT .....	11
2.3.    CAUSE FOR APPROVING THE SETTLEMENT AGREEMENT .....	12
2.4.    FREE AND CLEAR SALE OF THE POLICY TO ACUITY IS APPROPRIATE UNDER BANKRUPTCY CODE SECTION 363 .....	13
2.5.    ACUITY IS A GOOD-FAITH PURCHASER UNDER BANKRUPTCY CODE SECTION 363(M) .....	14
2.6.    THE SUPPLEMENTAL INJUNCTION IS APPROPRIATE UNDER BANKRUPTCY CODE SECTION 105(A) TO IMPLEMENT THE SALE OF THE SUBJECT POLICY FREE AND CLEAR OF INTERESTS .....	15
2.7.    RELIEF REQUESTED. ....	16
ARTICLE III TREATMENT OF UNCLASSIFIED CLAIMS .....	16
3.1.    ADMINISTRATIVE CLAIMS .....	16
ARTICLE IV CLASSIFICATION OF CLAIMS .....	17
4.1.    SUMMARY .....	17
ARTICLE V TREATMENT OF CLASSIFIED CLAIMS .....	18
5.1.    PERSONAL INJURY CLAIMS (CLASS 1) .....	18
5.2.    BUSINESS INTERRUPTION AND PROPERTY DAMAGE CLAIMS (CLASS 2) .....	19
5.3.    SUBROGATION CLAIMS (CLASS 3) .....	20
5.4.    PENALTY CLAIMS (CLASS 4) .....	21
5.5.    CONTRIBUTION CLAIMS (CLASS 5) .....	21
5.6.    INTERESTS (CLASS 6) .....	21
5.7.    PROMISSORY NOTE CLAIMS (CLASS 7) .....	21
ARTICLE VI MEANS OF IMPLEMENTATION OF THE PLAN .....	21
6.1.    ESTABLISHMENT OF CLAIMANTS' FUND AND FUNDING .....	21
6.2.    ESTABLISHMENT OF ADMINISTRATIVE CLAIMS RESERVE .....	22
ARTICLE VII SETTLING INSURERS .....	22
7.1.    JUDGMENT REDUCTION .....	22
7.2.    INDEMNIFICATION OBLIGATIONS .....	23
7.3.    WAIVERS, CONSENTS, AND FEES .....	23

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
ARTICLE VIII PROCEDURES FOR GENERAL CLAIMS ADMINISTRATION.....	23
8.1. RESERVATION OF RIGHTS TO OBJECT TO CLAIMS .....	23
8.2. OBJECTIONS TO CLAIMS.....	24
8.3. DETERMINATION OF CLAIMS .....	24
8.4. NO DISTRIBUTIONS PENDING ALLOWANCE.....	24
8.5. CLAIM ESTIMATION .....	25
ARTICLE IX DISTRIBUTIONS UNDER THE PLAN.....	25
9.1. PAYMENT DATE .....	25
9.2. UNDELIVERABLE DISTRIBUTIONS .....	25
9.3. SETOFFS .....	25
9.4. NO INTEREST ON CLAIMS .....	26
9.5. WITHHOLDING TAXES .....	26
ARTICLE X EFFECTIVENESS OF THE PLAN.....	26
10.1. CONDITIONS TO OCCURRENCE OF EFFECTIVE DATE.....	26
10.2. NOTICE OF EFFECTIVE DATE .....	26
10.3. EFFECT OF NON-OCCURRENCE OF CONDITIONS.....	26
ARTICLE XI EFFECTS OF CONFIRMATION .....	27
11.1. POST-CONFIRMATION DUTIES OF THE DEBTOR; DISSOLUTION OF THE DEBTOR .....	27
11.2. NO DISCHARGE .....	27
11.3. PERMANENT INJUNCTION AGAINST ENJOINED CLAIMS.....	27
11.4. SUPPLEMENTAL INSURER INJUNCTION PREVENTING PROSECUTION OF CLAIMS.....	28
11.5. INJUNCTIONS INTEGRAL .....	29
11.6. INJUNCTION DEEMED ISSUED AND PERMANENT .....	29
11.7. EXCULPATION; LIMITATION OF LIABILITY.....	29
ARTICLE XII MISCELLANEOUS PROVISIONS .....	30
12.1. RETENTION OF JURISDICTION .....	30
12.2. AMENDMENTS AND MODIFICATIONS.....	31
12.3. NON-SEVERABILITY .....	31
12.4. FINAL DECREE .....	31
12.5. PLAN AS SETTLEMENT COMMUNICATION .....	31
ARTICLE XIII BANKRUPTCY RULE 9019 REQUEST.....	32
ARTICLE XIV CONFIRMATION REQUEST.....	32

**EXHIBITS AND SCHEDULES**

EXHIBIT A           RELEASE

**TABLE OF CONTENTS**

(continued)

**Page**

EXHIBIT B	ACUITY AGREEMENT
EXHIBIT C	ACUITY POLICY

SCHEDULE 1	CLASS 1 CLAIMS
SCHEDULE 2	CLASS 2 CLAIMS
SCHEDULE 3	CLASS 3 CLAIM

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATION**

**1.1. DEFINED TERMS.** For the purposes of the Plan, except as expressly provided, all capitalized terms not otherwise defined herein have the meanings ascribed to them below:

1. “Acuity” means Acuity, A Mutual Insurance Company, and its respective parents, subsidiaries, and affiliated companies.
2. “Acuity Agreement” means the settlement agreement between the Hultgren Construction Parties, the Members, and Acuity, attached as Exhibit B.
3. “Acuity Policy” means the commercial excess liability and Bis-Pack insurance policy, identified as policy number X87409, which Acuity issued to Hultgren Construction, LLC for the policy period of January 20, 2016 through January 20, 2017.
4. “Administrative Claim” means a claim for costs and expenses of administration under Bankruptcy Code Sections 503, 507 (a)(2), or 507 (b), including claims for post-petition taxes claims, actual and necessary expenses of preserving the Estate, actual and necessary expenses of operating the business of the Debtor, all Professional Claims, and fees or charges assessed against the Estate under 28 U.S.C. § 1930.
5. “Administrative Claim Reserve” means the portion of Acuity’s funding that shall be held back by the Debtor at the time Acuity transfers its portion of the Plan funding into the Claimant’s Fund as required by Article VI. The amount of the Administrative Claims Reserve shall equal the estimated amount of all unpaid Administrative Claims that are predicted to become Allowed on and after the Effective Date. Prior to the Confirmation Hearing, the Debtor will file a disclosure of the amount of the Administrative Claim Reserve.
6. “Allowed Claim” means any portion of Claim that is an allowed claim under Bankruptcy Code Section 502 or as agreed to be allowed by the Debtor in accordance with Section 8.3.
7. “Allowed Professional Claim” means a Professional Claim for which the Bankruptcy Court has entered an Order, which has become a Non-Appealable Order, allowing the relevant Fee Application.
8. “Approval Order” means an order of the Bankruptcy Court approving the Acuity Agreement as such order may be awarded, modified, or supplemented.
9. “Assets” means, collectively, any and all property of the Debtor or the Estate, respectively, of every kind and character, wherever located, whether real or personal, tangible or intangible, and specifically including cash and Causes of Action.
10. “Ballot” means the ballot, the form of which has been approved by the Bankruptcy Court, accompanying the disclosure statement provided to each holder of a claim entitled to vote to accept or reject the Plan.

11. “Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as amended and codified in Title 11 of the United States Code.
12. “Bankruptcy Court” means the United States Bankruptcy Court for the District of South Dakota.
13. “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure as currently promulgated.
14. “Building Collapse” means the collapse of structures located at 136 S. Phillips Ave., and 132 S. Phillips Ave., Sioux Falls, South Dakota on December 2, 2016.
15. “Business Day” means any day except Saturday, Sunday, federal holidays, or a “legal holiday,” as that term is defined in Bankruptcy Rule 9006(a).
16. “Business Interruption and Property Damage Claim” means a Collapse Claim in which the alleged damage on account of a business interruption or property damage claim exceeds fifty percent (50%) of the Allowed Claim.
17. “Cash” means cash, cash equivalents, bank deposits, and negotiable instruments payable on demand.
18. “Cause of Action” or “Causes of Action” means—except as provided otherwise in the Plan, the Confirmation Order, or any document, instrument, release, or other agreement entered into in connection with the Plan—all claims, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, controversies, variances, trespasses, damages, judgments, third-party claims, counterclaims, and cross claims of the Debtor or its Estate, including an action that is or may be pending on the Effective Date against any Person based on law or equity, including under the Bankruptcy Code, whether direct, indirect, derivative, or otherwise and whether asserted or unasserted, known or unknown, any action brought pursuant to Bankruptcy Code Sections 522, 541–45, 547– 51, and 553; provided, however, that any affirmative defense or cross-claim asserted with respect to a claim shall not be deemed a Cause of Action to the extent that it seeks to disallow or reduce, or is offset against, such claim.
19. “Cincinnati” means The Cincinnati Insurance Company and its respective parents, subsidiaries, and affiliated companies.
20. “Cincinnati Policy” means the Commercial General Liability Policy, identified as policy no. EPP 0401081, including a Commercial Umbrella Policy, which Cincinnati issued to Olympia Real Estate Holdings, LLC for the policy period of August 15, 2016 to August 15, 2019. By endorsement, Boomerang Investments, LLC and CLP Investments, LLC were added to the policy as additional insureds effective November 30, 2016.
21. “Claim” means any past, present or future claim, demand, action, request, cause of action, suit, proceeding or liability of any kind or nature whatsoever, whether at law or equity, known or unknown, actual or alleged, asserted or not asserted, suspected or not suspected, anticipated or unanticipated, accrued or not accrued, fixed or contingent, which has been or

may be asserted by or on behalf of any Person, whether seeking damages (including compensatory, punitive or exemplary damages) or equitable, mandatory, injunctive, or any other type of relief, including cross-claims, counterclaims, third-party claims, suits, lawsuits, administrative proceedings, notices of liability or potential liability, arbitrations, actions, rights, causes of action or orders, and any other claim within the definition of “claim” in Bankruptcy Code Section 101(5).

22. “Claim Filing Date” means October 15, 2018.
23. “Claim Payment Date” means the date which is ten (10) Business Days after a Claim becomes an Allowed Claim by a Final Order if such Claim is not an Allowed Claim on the Effective Date.
24. “Claimants’ Fund” means all Assets and payments contemplated in Section 6.1, except the Administrative Claim Reserve.
25. “Collapse Claim” means any Claim against the Settling Parties that arises out of, relates to, results from, or is in connection with, in whole or in part, directly or indirectly, the Building Collapse, including any such Claim that seeks monetary damages or any other relief, under any theory of liability, including vicarious liability; *respondeat superior*; any fraud-based theory, including fraud in the inducement; any negligence-based or employment-based theory, including negligent hiring, supervision, retention or misrepresentation; any other theory based on misrepresentation, concealment, or unfair practice; contribution; indemnity; public or private nuisance; or any other theory, including any theory based on public policy or any acts or failures to act by any of the Settling Parties or any other Person for whom any of the Settling Parties are allegedly responsible, including any such Claim asserted against any of the Settling Parties in connection with the Chapter 11 case. “Collapse Claim” does not include, however, any criminal charges, pending or not yet pending and in the investigative stage, related to the Building Collapse or any administrative case(s) pending with the Department of Labor.
26. “Confirmation Date” means the date on which the Bankruptcy Court enters the Confirmation Order.
27. “Confirmation Order” means the order entered by the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code Section 1129 which becomes a Non-Appealable Order.
28. “Debtor” means Hultgren Construction, LLC.
29. “Developer Parties” means Legacy Development & Consulting Company, LLC in its alleged capacity as developer, and any other capacity, and, solely to the extent of and in their capacity as such, their respective predecessors and successors, and all of the foregoing Person’s past, present, and future members, managers, shareholders, trustees, officers, directors, officials, employees, agents, representatives, servants, contractors, consultants, volunteers, attorneys, professionals, insiders, subsidiaries, merged or acquired companies or operations, and their successors and assigns.

30. “Disputed” when used with respect to a claim against the Debtor or property of the Debtor, means a claim: (i) designated as disputed, contingent or unliquidated in the Debtor’s Schedules; (ii) which is the subject of an objection, appeal, or motion to estimate that has been or will be timely filed by a Party In Interest and which objection, appeal, or motion has not been determined by a Non-Appealable Order; or (iii) which during the period prior to the deadline fixed by the Plan or the Bankruptcy Court for objecting to such claim, is in excess of the amount scheduled as other than disputed, unliquidated, or contingent. In the event that any part of a claim is Disputed, such claim in its entirety shall be deemed to constitute a Disputed Claim for purposes of distribution under the Plan unless the Debtor, and the holder thereof agree otherwise. To the extent the term “Disputed” is used in the Plan with respect to a specified class of claims or an unclassified category of claims (i.e., “Disputed [class designation/unclassified claim category] Claim”), the resulting phrase shall mean a Disputed Claim of the specified class or unclassified category of claims.
31. “District Court” means the United States District Court for the District of South Dakota.
32. “Effective Date” means the date upon which the conditions in Article X have been satisfied.
33. “Enjoined Claim(s)” means any Collapse Claim, any Extra-Contractual Claim, or any other Claim against any of the Settling Insurers that, directly or indirectly, arises out of, relates to, or is in connection with any Collapse Claim, any Extra-Contractual Claim, any Medicare Claim, and any Claim covered by the Injunctions in Article XI. “Enjoined Claim” does not include, however, any criminal charges, pending or not yet pending and in the investigative stage, related to the Building Collapse or any administrative case(s) pending with the Department of Labor.
34. “Estate” means the estate created in this Chapter 11 case pursuant to Bankruptcy Code Section 541.
35. “Extra-Contractual Claim” means any Claim against any of the Settling Insurers based, in whole or in part, on allegations that any of the Settling Insurers acted in bad faith or in breach of any express or implied duty, obligation or covenant, contractual, statutory or otherwise, including any Claim on account of alleged bad faith; failure to act in good faith; violation of any express or implied duty of good faith and fair dealing; violation of any unfair claims practices act or similar statute, regulation, or code; any type of alleged misconduct; or any other act or omission of any of the Settling Insurers of any type for which the claimant seeks relief other than coverage or benefits under a policy of insurance. Extra-Contractual Claims include: (i) any claim that, directly or indirectly, arises out of, relates to, or is in connection with any of the Settling Insurers’ handling of any Claim or any request for insurance coverage, including any request for coverage for any Claim, including any Collapse Claim; (ii) any Claim that, directly or indirectly, arises out of, relates to, or is in connection with any of the Settling Insurer Policies, or any contractual duties arising therefrom, including any contractual duty to defend any of the Settling Parties against any Claim, including any Collapse Claim; and (iii) any Claim that directly or indirectly, arises out of, relates to, or is in connection with the conduct of the Settling Insurers with respect to the negotiation of the Plan.

36. “Fee Application” means an application filed with the Bankruptcy Court in accordance with the Bankruptcy Code and Bankruptcy Rules for payment of a Professional Claim.
37. “Final Decree” means the decree contemplated under Bankruptcy Rule 3022.
38. “Hultgren Construction Parties” means collectively the Debtor and (i) each of the past, present, and future parents, subsidiaries, merged companies, divisions, and acquired companies of the Debtor; and (ii) each of the foregoing Persons’ respective predecessors, successors, and assigns.
39. “Interest” means all liens, Claims, encumbrances, interests, and other rights of any nature, whether at law or in equity, including any rights of contribution, indemnity, defense, subrogation, or similar relief.
40. “Lien” means any mortgage, lien, pledge, security interest or other charge or encumbrance or security device of any kind in, upon, or affecting any Asset of the Debtor as contemplated by Bankruptcy Code Section 101(37).
41. “Medicare Claims” means any and all Claims relating to Personal Injury Claims by the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services and/or any other agent or successor Person charged with responsibility for monitoring, assessing, or receiving reports made under MMSEA and pursuing Claims under MSPA, including Claims for reimbursement of payments made to Personal Injury Claimants who recover or receive any distribution from the Claimants’ Fund and Claims relating to reporting obligations.
42. “Members” means, in their capacities as individuals and members, officers, or directors of the Debtor: (i) Aaron Hultgren; (ii) Paul Cink; (iii) Larry Canfield; and (iv) Norm Drake.
43. “MMSEA” means Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L.110-173)”, which imposes reporting obligations on those Persons with payment obligations under the MSPA.
44. “MSPA” means 42 U.S.C. § 1395y et seq., or any other similar statute or regulation, and any related rules, regulations, or guidance issued in connection therewith or amendments thereto.
45. “Non-Appealable Order” means an order, judgment, or other decree (including any modification or amendment thereof) that remains in effect and is final and has not been reversed, withdrawn, vacated, or stayed, and as to which the time to appeal or seek review, rehearing, or writ of certiorari has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which, if such an appeal, writ of certiorari, review, reargument, or rehearing has been sought, (a) appeal, certiorari, review, reargument, or rehearing has been denied or dismissed and the time to take any further appeal or petition for certiorari, review, reargument, or rehearing has expired; or (b) such order has been affirmed by the highest court to or in which such order was appealed, reviewed, reargued, or reheard, or that granted certiorari, and the time to take any further appeal or petition for certiorari, review, reargument, or rehearing has expired; provided,

however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Bankruptcy Rules may be filed with respect to such order shall not cause such order not to be a “Non-Appealable Order.”

46. “Parties In Interest” means any party granted a right to be heard by 11 U.S.C. § 1109.
47. “Penalty Claims” means a Claim against the Debtor, whether secured or unsecured, for any fine, penalty or forfeiture, or for multiple, exemplary or punitive damages, arising before the Petition Date, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim.
48. “Person” means any individual or entity, including any corporation, limited liability company, partnership, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, proprietorship, association, joint stock company, joint venture, estate, trust, trustee, personal executor or personal representative, unincorporated association, or other entity, including any federal, international, foreign, state, or local governmental or quasi-governmental entity, body, or political subdivision or any agency or instrumentality thereof and any other individual or entity within the definition of (i) “person” in Bankruptcy Code Section 101(41); or (ii) “entity” in Bankruptcy Code Section 101(15).
49. “Personal Injury Claims” means a Collapse Claim in which the alleged damage on account of a personal injury claim exceeds fifty percent (50%) of the Allowed Claim.
50. “Petition Date” means July 18, 2018, the date on which the Debtor commenced the Chapter 11 case.
51. “Plan” means this Chapter 11 plan of liquidation, either in its present form or as it may be altered, amended, or modified from time to time in accordance with the provisions of the Bankruptcy Code and the Bankruptcy Rules.
52. “Priority Tax Claim” means a claim of a governmental unit of the kind specified in Bankruptcy Code Section 507(a)(8).
53. “Pro Rata” means, with respect to any distribution on account of any allowed claim in any class, the ratio of (i) the amount of such allowed claim to (ii) the sum of (a) all allowed claims in such class and (b) the aggregate maximum of all allowed Claims in such class.
54. “Professional” means any professional employed or to be compensated pursuant to Bankruptcy Code Sections 327, 328, 330, 331, 503(b), or 1103.
55. “Professional Claim” means a claim for compensation for services and/or reimbursement of expenses pursuant to Bankruptcy Code Sections 327, 328, 330, 331, or 503(b) in connection with an application made to the Bankruptcy Court in the Chapter 11 case.
56. “Proof of Claim” means a proof of claim filed in the Chapter 11 case pursuant to Bankruptcy Code Section 501 and/or pursuant to any order of the Bankruptcy Court, together with supporting documents.

57. “Property Owner Parties” means CLP Investments, LLC; Olympia Real Estate Holdings, LLC; Boomerang Investments, LLC and, solely to the extent of and in their capacity as such, their respective predecessors and successors, and all of the foregoing Persons’ past, present, and future members, shareholders, trustees, officers, directors, officials, employees, managers, agents, representatives, servants, contractors, consultants, volunteers, attorneys, professionals, insiders, subsidiaries, merged or acquired companies or operations, and their successors and assigns.
58. “Related Insurance Claim” means any Claim by any Person against any Settling Party, including an Extra-Contractual Claim, that, directly or indirectly, arises from, relates to, or is in connection with a Collapse Claim, including any such Claim for defense, indemnity, contribution, subrogation, or similar relief or any direct action or claim.
59. “Released Parties” means: (a) the Members, (b) the Developer Parties, and (c) the Property Owner Parties.
60. “Settling Insurers” means Acuity, Cincinnati, and United Fire.
61. “Settling Insurer Policies” means the Acuity Policy; United Fire Policy; and Cincinnati Policy.
62. “Settling Parties” means, individually and collectively, the (i) Hultgren Construction Parties; (ii) Released Parties; and (iii) Settling Insurers solely in their capacities as insurers under their respective Settling Insurer Policies.
63. “Subrogation Claim” means a Collapse Claim in which the alleged damage is on account of a subrogation claim.
64. “U.S. Trustee” means the Office of the United States Trustee for Region 12, which includes the District of South Dakota.
65. “Unimpaired” means, with respect to a class of claims, that such class is not Impaired.
66. “United Fire” means United Fire & Casualty Company and its respective parents, subsidiaries, and affiliated companies.
67. “United Fire Policy” means the commercial general liability insurance policy, identified as policy number 203067783, which United Fire issued to Legacy Development & Consulting Company, LLC for the policy period of 05-23-2016 through 05-23-2017.
68. “Unsecured Claims” means claims which are not secured by any property of the Debtor’s Estate and which are not part of any other class defined in this Plan.

**1.2. INTERPRETATION.** For purposes of the Plan:

- (a) any term that is not defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable;

(b) the terms “including” or “include(s)” are intended to be illustrative and not exhaustive, and shall be construed as “including, but not limited to” or “include(s), but is not limited to”;

(c) whenever the context requires, terms shall include the plural as well as the singular number, and the masculine gender shall include the feminine and the feminine gender shall include the masculine;

(d) the rules of construction set forth in Bankruptcy Code Section 102 and in the Bankruptcy Rules shall apply;

(e) unless the context should otherwise require, all references to documents to be filed shall refer to filing with the Bankruptcy Court in accordance with the Bankruptcy Code and Bankruptcy Rules;

(f) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(g) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified or supplemented;

(h) unless otherwise specified, all references in the Plan to “Articles,” “Sections,” “Schedules” and “Exhibits” are references to Articles, Sections, Schedules and Exhibits of or to the Plan;

(i) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan;

(j) captions and headings to Articles and Sections are inserted for ease of reference only and shall not be considered a part of the Plan or otherwise affect the interpretation of the Plan; and

(k) the Plan supersedes all prior plans, drafts of the Plan, and all prior negotiations, agreements, and understandings with respect to the Plan, evidence of which shall not affect the interpretation of any provision of the Plan.

**1.3. TIME PERIODS.** In computing any period of time prescribed or allowed by the Plan, unless otherwise expressly provided, the provisions of Bankruptcy Rule 9006(a) shall apply. Enlargement of any period of time prescribed or allowed by the Plan shall be governed by the provisions of Bankruptcy Rule 9006(b).

#### 1.4. EXHIBITS AND SCHEDULES.

(a) All Exhibits and Schedules to the Plan (including any Supplemental Plan Documents) (with the Plan, the “Plan Documents”) are hereby incorporated by reference and made part of the Plan as if set forth fully herein.

(b) The Exhibits to the Plan include the following:

Exhibit A:	Release
Exhibit B:	Acuity Agreement
Exhibit C:	Acuity Policy

(c) The Schedules to the Plan include the following:

Schedule 1:	List of Class 1 Claims
Schedule 2:	List of Class 2 Claims
Schedule 3:	List of Class 3 Claims

### **ARTICLE II** **COMPROMISES AND SETTLEMENTS**

**2.1. APPROVAL OF SETTLEMENT AGREEMENT.** Pursuant to Bankruptcy Code Section 105 and Fed. R. Bankr. P. 9019 and in consideration for the classification, distributions, releases, injunctions, and other benefits provided under the Plan, including, inter alia, the commitment of the Settling Parties to either contribute or facilitate the contribution of funds to the Claimants’ Fund, the provisions of the Plan shall constitute a good faith compromise and settlement of all the Claims released and enjoined by the Plan. On or before the Effective Date, the Bankruptcy Court shall have entered a Confirmation Order, which shall have become a Non-Appealable Order, approving such global compromise. For the avoidance of doubt, no parties are waiving their right to appeal such order during the applicable appeal period. The Bankruptcy Court’s findings shall constitute its determination that such compromises and settlements are in the best interests of the Debtor’s Estate, the Collapse Claimants, holders of other Claims, and other Parties In Interest, and are fair, equitable, and within the range of reasonableness, and an appropriate exercise of each such Person’s business judgment under the applicable laws of corporate governance. The entry of the Confirmation Order, once it becomes a Non-Appealable Order, may constitute the order approving the compromises and settlements required under this Section and Fed. R. Bankr. P. 9019.

**2.1. FACTUAL BACKGROUND REGARDING COMPROMISE** Prior to the Petition Date, the Debtor was a named defendant in four lawsuits (the “Lawsuits”).<sup>1</sup> The Lawsuits

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<sup>1</sup> The four lawsuits were filed in the South Dakota’s Second Judicial Circuit Court and are captioned as follows: 49CIV18-001160 – *IJK, LLC, DBA Eastwold Smoke Shop v. Legacy Development & Consulting Company, LLC, Aaron Hultgren, Hultgren Construction, LLC, Boomerang, LLC, CLP Investments, LLC, Olympia Real Estate Holdings, LLC, and Rise Structural Associates*; 49CIV18-00869 – *Emily Fodness, Michael Fodness, and Christine Fodness v. Legacy Development & Consulting Company, LLC, Aaron Hultgren, Hultgren Construction, LLC, Boomerang, LLC, CLP Investments, LLC, Olympia Real Estate Holdings, LLC, and Rise Structural Associates*;

allege damages stemming from the Building Collapse. The Debtor was performing construction work on said building and the Lawsuits allege numerous causes of action based upon the Debtor's alleged negligence.

(b) Acuity issued the Acuity Policy to the Debtor for policy period January 20, 2016 through January 20, 2017. A true and correct copy of the Policy is attached to the Plan as Exhibit C. The Policy provides coverage for bodily injury, property damage, or personal and advertising injury on a claims made basis

(c) The underlying liability limit on the Acuity Policy is \$1,000,000, and the excess liability limit is an additional \$1,000,000. The total amount of insurance proceeds available under the Acuity Policy is \$2,000,000. The Debtor has provided notice of a claim to Acuity for the Lawsuits. Likewise, Aaron Hultgren has also provided notice of a claim for the Lawsuits. Acuity is providing a defense to the Debtor and to Aaron Hultgren (in his capacity as a member of the Debtor) in the aforementioned Lawsuits under a reservation of rights.

(d) Under the Policy, the following parties are deemed to be insured: "A limited liability company, you are insured. Your members are insured, but only with respect to the conduct of your business." Acuity Policy, Ex. C, p. 39. The Debtor is the named insured. The Members are also insureds but only with respect to their conduct of the Debtor's business.

(e) The Debtor, the Members, and Acuity have reached a settlement agreement, filed contemporaneously herewith as **Exhibit B** (the "Settlement Agreement"), in order to resolve coverage disputes regarding the Policy and to provide speedy and equitable recovery for all creditors. The Settlement Agreement's effectiveness is conditioned on the entry of a Non-Appealable Confirmation Order.

(f) **The Debtor's Position.** The Debtor's interest in the Policy proceeds is the Debtor's estate's most valuable asset. That interest, however, is subject to the rights of the Policy's other insureds, specifically Aaron Hultgren and the other Members' rights. Under South Dakota law, a plaintiff may not pursue a direct cause of action against the defendant's insurer until a final judgment is rendered. S.D. Codified Laws § 58-23-1; *see also Trouten v. Heritage Mut. Ins. Co.*, 2001 S.D. 106, ¶¶ 12, 632 N.W.2d 856, 858 ("There is no statute in South Dakota which allows a direct action by an injured person against another's liability insurer absent a judgment having been first obtained against the tortfeasor. . . . Until the legislature enacts [such] a statute. . . this Court declines to participate in judicially legislating such a public policy."). Thus, absent a settlement

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49CIV18-002171 – *Cincinnati Insurance Company, as subrogee of Boomerang Investments, LLC and Pave, LLC v. Hultgren Construction, LLC, Aaron Hultgren, individually, Rise Structural Associates, Inc., Randall/Stanley Architects, Inc., and Legacy Development & Consulting Company, LLC*; 49CIV18-000774 – *John F. MacMahon v. Legacy Development & Consulting Company, LLC, Aaron Hultgren, Hultgren Construction, LLC, Boomerang, LLC, CLP Investments, LLC, Olympia Real Estate Holdings, LLC, and Rise Structural Associates.*

A fifth lawsuit was filed stemming from the same incident but which does not name the Debtor as a defendant. Rather, Aaron Hultgren, one of the Debtor's owners and managers, is named as a Defendant. As discussed further below, Aaron Hultgren is covered by the Policy to the extent of his conduct of the Debtor's business. The case is captioned 49CIV-000773 – *John J. McMahon, Jr., individually and as personal representative of the estate of Ethan Thad McMahon, deceased, v. Legacy Development & Consulting Company, LLC, Aaron Hultgren, Boomerang, LLC, CLP Investments, LLC, Olympia Real Estate Holdings, LLC, and Rise Structural Associates.*

with Acuity and the Members or a final judgment in the Lawsuits, Acuity would have no obligation to provide payment to the Debtor's creditors under the Policy.

The Settlement Agreement, therefore, offers a mechanism for the Debtor to liquidate its interest in the Policy proceeds and to provide for equitable distribution of those proceeds amongst its creditors (rather than the proceeds going solely to the first claimant to obtain a judgment against the Debtor).

**(g) The Members' Position.** The Members are also insureds under the Policy, with respect to their conduct of the Debtor's business. Currently, Aaron Hultgren is a named defendant in the Lawsuits and Acuity is providing his defense under a reservation of rights. Furthermore, the other three Members could still be named in future lawsuits. Any potential sale of the Policy to the Debtor would result in the Members' forfeiting their rights under the Policy. Further, the Members are entitled to indemnification from the Debtor for claims related to their conduct as Members of the Debtor. Thus, the Members are surrendering significant rights, including the right of insurance coverage, by agreeing to the Settlement Agreement's terms. The Members do so in order to provide a substantial contribution to the Debtor's estate, in exchange for the releases of liability of the Members in the Plan.

**(h) Acuity's Position.** Although Acuity has provided defense costs to the Debtor and Aaron Hultgren under the Policy, it has reserved its right to contest coverage, including the right to deny coverage for losses not covered by the Policy, or losses subject to any conditions, limitations, terms, and provisions in the Policy. Additionally, as noted above, absent a final judgment in the Lawsuits, Acuity has no obligation to pay to the Debtor any Policy proceeds.

Acuity also supports the Settlement Agreement in an effort to avoid the time, expense, and anguish of litigation for all parties and to provide a fair and equitable distribution of the Policy proceeds to the Debtor's creditors.

## 2.2. THE SETTLEMENT AGREEMENT

**(a)** The Debtor, the Members, and Acuity desire to resolve all disputes related to coverage under the Policy by executing the Settlement Agreement.

**(b)** Pursuant to the Settlement Agreement's terms, Acuity shall purchase, or buyback, the Policy from the Debtor in exchange for Acuity's payment of \$2,000,000 to the Debtor. Settlement Agreement, Plan Ex. B, ¶ 1. Acuity's \$2,000,000 payment shall be considered "the total amount Acuity is obligated to pay on account of any and all claims of any kind made under or related to the Policy." *Id.* ¶ 2. Acuity will be considered to own the Policy free and clear and shall have no further obligations under the Policy. *Id.* ¶¶ 2. All parties' rights under the Policy "shall be permanently and irrevocably extinguished as if the Policy had never been issued." *Id.* ¶ 3.

**(c)** The Settlement Agreement is conditioned on the Bankruptcy Court's approval of the Settlement Agreement, either through separate order or as part of the Confirmation Order, and that said order approving the Settlement Agreement becomes a final and Non-Appealable Order. *Id.* ¶¶ 2, 4. The Debtor and Acuity both agree to work towards achieving such approval. *Id.* ¶2, Article II.

(d) The Settlement Agreement is also conditioned on the Bankruptcy Court's entry of a Confirmation Order. *Id.*, ¶ 4.

(e) Additionally, the Settlement Agreement contains mutual releases of obligations between Acuity and the Debtor and Acuity and the Members, including the waiver by the Debtor and the Members of Acuity's duty to defend or indemnify the Debtor and Members. *Id.*, Article III.

(f) Under the Settlement Agreement, the Debtor also agrees to not obtain payment from another insurer for a portion of liability attributable or allocable to Acuity, in order to avoid triggering another insurer's contribution, subrogation, indemnification, or other similar claim. *Id.* ¶ 23.i. In the event that such a claim does arise, however, the Debtor agrees to reduce the payment from the other insurer by the amount allocated to Acuity. *Id.* ¶ 23.ii. Acuity also agrees to waive any claims for reimbursement it might have against another insurer. *Id.* ¶ 24.

(g) Finally, the Settlement Agreement establishes a permanent injunction, pursuant to Bankruptcy Code Sections 105(a) and 363(f), against the prosecution, continuation, or commencement of any interest or claim against Acuity under the Acuity Policy as described in Section 11.4 of this Plan. *Id.* ¶ 25. The Debtor agrees to file a motion and supporting papers protecting Acuity in the event that such a claim or interest is asserted. *Id.*

### 2.3. CAUSE FOR APPROVING THE SETTLEMENT AGREEMENT

(a) Bankruptcy Rule 9019 provides that, after notice and a hearing, a bankruptcy court "may approve a compromise or settlement." Fed. R. Bankr. P. 9019. In bankruptcy proceedings, compromise is a favored and normal part of the Chapter 11 process. *In re Trism, Inc.*, 282 B.R. 662, 666 (B.A.P. 8th Cir. 2002). "A decision to approve or disapprove a proposed settlement under Bankruptcy Rule 9019 is within the discretion of the bankruptcy judge." *Id.* at 666 (citing *In re Flight Transp. Corp. Sec. Litig.*, 730 F.2d 1128, 1135–36 (8th Cir. 1984)). Bankruptcy Rule 9019 vests the Court with "broad authority to approve or disapprove all compromises and settlements affecting the bankruptcy estate." *In re Bates*, 211 B.R. 338, 343 (Bankr. D. Minn. 1997).

(b) In exercising its discretion, a court should consider the following factors:

(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

*Flight Transp.*, 730 F.2d at 1135–36 (citing *Drexel v. Loomis*, 35 F.2d 800, 806 (8th Cir. 1929); *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–425 (1968)); *In re Tri-State Ethanol Co. LLC*, 370 B.R. 222, 228 (Bankr. D.S.D. 2007).

(c) "A court's role in evaluating a proposed settlement under Rule 9019 is to determine if the settlement is in the best interest of the estate." *Trism*, 282 B.R. at 668. This does not mean that the court's function is to ensure the best possible settlement obtainable, rather the bankruptcy court should approve the settlement "unless it falls below the lowest point in the range

of reasonableness.” *In re New Concept House, Inc.*, 951 F.2d 932, 938 (8th Cir. 1991) (citing *In re Apex Oil Co.*, 92 B.R. 847, 867 (Bankr. E.D. Mo. 1988)); *Tri-State Ethanol*, 370 B.R. at 229.

(d) **Probability of Success in Litigation.** Given the uncertainty of the outcome of coverage disputes and the inherent difficulties of multi-party litigation, this factor weighs heavily in favor of approval of the Settlement Agreement. Further complicating matters, only some of the parties covered by the Policy are currently named defendants in the Lawsuits (the Debtor and Aaron Hultgren), while others have the potential of being named defendants at a later date (the other Members). Lastly, while the claims against the Debtor are stayed, claims against the other insureds under the Policy are not. As a result, a judgment against the other insureds may be entered before a determination of coverage is made. The end result could deprive the Debtor’s estate of its most valuable asset.

(e) **Likely Difficulties in Collection.** Absent settlement, it is likely the Debtor’s claimants would not receive compensation, if any, for several years. Furthermore, the possibility exists that most, if not all, of the insurance proceeds would be recovered by the first creditor to reduce their claims to a judgment, leaving little or no recovery for the remaining creditors. The timely, lump sum payment under the Settlement Agreement for the benefit of all of the creditors weighs this factor in favor of approval of the Settlement Agreement.

(f) **The Complexity, Expense, Inconvenience, and Delay of Possible Litigation.** As discussed above, the litigation would be complex, costly, and time consuming because any potential coverage under the Policy implicates multiple parties. Such multi-party litigation would be expensive, and could go on for years. This factor, therefore, also weighs in favor of approving the Settlement Agreement.

(g) **Interests of Creditors.** The Settlement Agreement is clearly above the “lowest point in the range of reasonableness.” *Id.* The Settlement Amount provides a lump sum payment to the estate, which is the full extent of insurance proceeds available. The creditors are thereby getting access to the full amount of insurance proceeds available, without the need for costly and timely litigation, which, even if successful, would never entitle the Debtor to more than the Policy limits of \$2,000,000.

(h) The Debtor respectfully requests that the Court approve the Settlement Agreement. Approving the Settlement Agreement will eliminate unnecessary litigation expenses and maximize the value of the Policy for the Debtor and its creditors. Such results are in the best interests of the Debtor, its estate, and the creditors thereof.

## **2.4. FREE AND CLEAR SALE OF THE POLICY TO ACUITY IS APPROPRIATE UNDER BANKRUPTCY CODE SECTION 363**

(a) The Settlement Agreement provides, pursuant to Bankruptcy Code Section 363, for a sale of the Policy and the Debtors’ rights under the Policy to Acuity. Section 363(b) allows the Debtor to sell property of the estate outside the ordinary course of business. 11 U.S.C. § 363(b). Such sale may be “free and clear of any interest in such property of any entity other than the estate,” if one of five conditions of § 363(f) are satisfied:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which the property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

(b) Section 363(f) is “written in the disjunctive, not conjunctive. Therefore, if any of the five condition of section 363(f) are met, the [Debtor] has the authority to conduct the sale free and clear.” *In re Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988). Courts have recognized that a debtor’s insurance policy, specifically the debtor’s rights under the policy, is property of the estate which may be sold under Section 363 of the Bankruptcy Code. *See, e.g., Estate of Lellock v. Prudential Ins. Co. of Am.*, 811 F.2d 186, 189 (3d Cir. 1987) (“We hold that an insurance policy is property of the estate within 11 U.S.C. § 541(a)(1)”); *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 92-93 (2d Cir. 1988) (“Numerous courts have determined that a debtor’s insurance policies are property of the estate . . . Having properly exercised jurisdiction over the insurance policies, the Bankruptcy Court had the authority to approve the settlements and to channel claims arising under the policies to the proceeds of the settlement.”).

(c) Here, the only other interest holders in the policy other than the Debtor’s estate are the Members, the other parties who may be insureds under the Policy. The sale therefore satisfies the criteria set forth in Bankruptcy Code Section 363(f)(2) because the Members have expressly consented to the sale. *See* 11 U.S.C. § 363(f)(2). Debtor respectfully requests that the Court approve the sale of the Policy and the Debtor’s rights under the Policy to Acuity free and clear of any and all claims and interests.

## **2.5. ACUITY IS A GOOD-FAITH PURCHASER UNDER BANKRUPTCY CODE SECTION 363(M)**

(a) Bankruptcy Code Section 363(m) provides: The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. 11 U.S.C. § 363(m).

(b) The Settlement Agreement is the product of good faith, arms-length bargaining among the parties. The Settlement Agreement is being entered into by the parties without fraud or collusion, with each party represented by counsel. The Debtor therefore respectfully requests that the Court find that Acuity is a good faith purchaser for value and is entitled to the protections afforded under Bankruptcy Code Section 363(m).

## 2.6. THE SUPPLEMENTAL INJUNCTION IS APPROPRIATE UNDER BANKRUPTCY CODE SECTION 105(A) TO IMPLEMENT THE SALE OF THE SUBJECT POLICY FREE AND CLEAR OF INTERESTS

(a) The Debtor respectfully requests that the Supplemental Injunction be issued in furtherance of the ‘free and clear’ provisions of Bankruptcy Code Section 363(f). “Though section 105(a) does not give the bankruptcy court carte blanche . . . it grants the extensive equitable powers that bankruptcy courts need in order to be able to perform their statutory duties.” *In re Caesars Ent. Oper. Co., Inc.*, 808 F.3d 1186, 1188 (7th Cir. 2015) (internal citations omitted).

(b) In deciding whether to grant such a supplemental injunction, the court should consider if the injunction is “likely to enhance the prospects for successful resolution of the disputes.” *Id.* at 1188-89 (citing *Zerand-Bernal Group, Inc. v. Cox*, 23 F.3d 159, 162-63 (7th Cir. 1994)). “If it is, and [the injunction’s] denial will thus endanger the success of the bankruptcy proceedings, the grant of the injunction would . . . be ‘appropriate to carry out the provisions’ of the Bankruptcy Code, since successful resolution of disputes arising in the bankruptcy proceedings is one of the Code’s central objectives.” *Id.*

(c) Courts have found that “an actual injunction barring creditors from suing a purchaser of estate assets is sometimes necessary and appropriate to give the ‘free and clear’ aspect of § 363(f) meaning.” *Dow Corning Corp.*, 198 B.R. at 245. Moreover, such injunctions “are relatively common with § 363(f) sale orders.” *In re Sunland*, No. 13-13301-TR7, 2014 WL 7011747, at \*5 (Bankr. D.N.M. Dec. 11, 2014); *see, e.g., In re Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125, Doc. Nos. 1226, 1235–39 (Bankr. D. Minn. August 30, 2018) (approving imposition of a similar injunction in favor of insurers under both Section 363 and 105(a)); *In re Diocese of Davenport*, Case No. 06-02229, Doc. No. 294, 5 (Bankr. S.D. Iowa May 1, 2008) (approving a similar injunction in favor of an insurer “because (i) such injunction is appropriate to implement the sale of the [policies] ‘free and clear’ under section 363(f)” and reasonable consideration was provided for such protection); *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 93 (2d Cir. 1988); *Campbell v. Motors Liquidation Co. (In re Motors Liquidation Co.)*, 428 B.R. 43, 56 (S.D.N.Y. 2010), *aff’d*, 430 B.R. 65 (S.D.N.Y. 2010). Accordingly, the Court is empowered to issue an injunction in furtherance of the contemplated sale.

(d) Acuity’s willingness to pay the Settlement Amount is conditioned on (i) mutual release of obligations between the Debtor and Acuity, (ii) mutual release of obligations between the Released Parties who are Members of the Debtor and Acuity, (iii) the aforementioned injunction, and (iv) entry of a Confirmation Order by the Bankruptcy Court which approves the Settlement Agreement.

(e) The Supplemental Injunction is necessary and appropriate to protect the integrity of the sale and settlement contemplated by the Settlement Agreement. Absent the protection of the injunction, Acuity may, notwithstanding its settlement and payment of the Settlement Amount, be unfairly subject to claims brought under the Acuity Policy. The injunction is necessary to give Section 363(f) its full effect and meaning. *See Dow Corning*, 198 B.R. at 245.

(f) Accordingly, the injunction contemplated herein is necessary and appropriate to enable the Debtor to successfully sell the Policy free and clear of all interests under Bankruptcy Code Section 363(f), to ensure that the counter-parties would receive the full extent of the protections that they are entitled to and which they bargained for, and ultimately to ensure a successful resolution of the Debtor's bankruptcy proceeding.

**2.7. RELIEF REQUESTED.** Pursuant to Bankruptcy Codes Sections 105(a) and 363, Bankruptcy Rules 2002 and 9019, Local Rules 6004-1(b) and 9019-1, the Debtor seeks entry of a Confirmation Order that approves the Settlement Agreement between the Debtor and Acuity. Specifically, the Debtor respectfully requests that the Confirmation Order (i) approve the Settlement Agreement; (ii) approve the sale of the Acuity Policy and the Debtor's rights under the Policy free and clear of claims and interests to Acuity under 11 U.S.C. § 363(f); (iii) finding that Acuity is a good faith purchaser receiving the protections of 11 U.S.C. § 363(m); (iv) enjoining all claims against Acuity which can arise out of or are in any way related to the Acuity Policy; and (v) providing such other relief as may be appropriate.

### **ARTICLE III** **TREATMENT OF UNCLASSIFIED CLAIMS**

**3.1. ADMINISTRATIVE CLAIMS.** As provided in Bankruptcy Code Section 1123(a)(1), Administrative Claims including Professional Claims, and Priority Tax Claims shall not be classified for the purposes of voting or receiving distributions under the Plan. Rather, all such claims shall be treated separately as unclassified claims on the terms set forth in this Article.

(a) Administrative Claims (other than Professional Claims). The holder of an Allowed Administrative Claim will receive, in full satisfaction of such Claim: (a) a single Cash payment in the Allowed amount of the Claim on the Effective Date (or the applicable Claim Payment Date); (b) payment as otherwise agreed in writing by the holder of the Allowed Claim; or (c) payment as ordered by the Bankruptcy Court. Every Allowed Administrative Claim for an expense of operation of the Debtor incurred in the ordinary course of such operations will be paid fully and in Cash in the ordinary course of business (including any payment terms applicable to any such expense). Allowed Administrative Claims other than Professional Charges, if any, remaining unpaid as of the Effective Date will be paid from the Administrative Claims Reserve.

(b) Professional Claims. Professionals shall file final Fee Applications on or before thirty (30) days after the Effective Date for approval of Professional Claims. The holder of an Allowed Professional Claim will receive payment as ordered by the Bankruptcy Court within ten (10) Business Days of entry of the court's order, except that aggregate payments from the Administrative Claims Reserve to the Debtor's Professionals shall not exceed \$250,000 for any and all interim or final Fee Applications.

(c) Priority Tax Claims. The holder of every Allowed Priority Tax Claim will be paid, in full satisfaction of such Claim: (a) a single Cash payment in the Allowed amount of the Claim on the Effective Date (or the applicable Claim Payment Date); (b) payment as otherwise agreed in writing by the holder of the Allowed Claim; or (c) payment as ordered by the Bankruptcy Court. Allowed Priority Tax Claims will be paid from the Administrative Claims Reserve.

(d) **Statutory Fees.** All fees due and payable pursuant to 28 U.S.C. § 1930 will be paid from the Administrative Claims Reserve. The Debtor shall file post-Confirmation Date quarterly reports in conformance with the U.S. Trustee guidelines. The U.S. Trustee shall not be required to file a request for payment of its quarterly fees, which will be deemed Administrative Claims against the Debtor and its Estate.

#### **ARTICLE IV**

#### **CLASSIFICATION OF CLAIMS**

**4.1. SUMMARY.** Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of Classes of Claims against and Interests in the Debtor. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims, as described above, have not been classified and are not entitled to vote on the Plan. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, released, or otherwise settled prior to the Effective Date.

The following table designates the Classes of Claims against and Interests in the Debtor and specifies which of those Classes are (i) impaired or unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, and (iii) deemed to reject the Plan:

<b>Class</b>	<b>Designation</b>	<b>Impairment</b>	<b>Entitled to Vote</b>
Class 1	Personal Injury Claims	Impaired	Yes
Class 2	Business Interruption and Property Damage Claims	Impaired	Yes
Class 3	Subrogation Claims	Impaired	Yes
Class 4	Penalty Claims	Impaired	Yes
Class 5	Contribution Claims	Disallowed	No
Class 6	Interests	Impaired	No (deemed to accept)
Class 7	Promissory Note Claims	Impaired	Yes

**ARTICLE V**  
**TREATMENT OF CLASSIFIED CLAIMS**

**5.1. PERSONAL INJURY CLAIMS (CLASS 1).**

(a) **Definition.** A Class 1 Claim means a Personal Injury Claim. A “Class 1 Claimant” shall mean a holder of a Class 1 Claim. For the avoidance of doubt, the United States Department of Labor, Occupational Safety and Health Administration (OSHA) is not included in Class 1.

(b) **Summary.** The Plan creates a Claimants’ Fund to fund payments to Class 1 Claimants entitled to such payments under the Plan. Class 1 Claimants’ share of the Claimants’ Fund is the only amount they will be entitled to receive from the Settling Parties. Distribution from the Claimants’ Fund does not preclude claims or recoveries by Personal Injury Claimants against Persons who are not Settling Parties for the liability of such Persons not attributable to the causal fault or share of liability of Settling Parties. Any Person that is or was alleged to be a joint tortfeasor with any of the Settling Parties in connection with the Building Collapse that forms the basis of a Personal Injury Claim shall not be liable for any Settling Parties’ share of causal liability or fault.

(c) **Treatment.** The Settling Parties’ liability for and obligation to pay, if any, Class 1 Claims shall be released. The holder of a Class 1 Claim will receive, in satisfaction of the Settling Parties’ share of causal liability or fault of such Claim: a pro rata share, based on the Allowed Claims and percentages listed in Schedule 1, of the funds remaining in the Claimants’ Fund after payment has been made to Classes 2 and 3 Claims and of the funds remaining in the Administrative Claims Reserve, once payment has been made on all allowed Administrative Claims, subject to the limitations outlined in Article III. The Settling Parties shall have no further liability in connection with Class 1 Claims.

(d) **Release and Certification.** No Class 1 Claimant shall receive any payment on any award unless and until such Class 1 Claimant has executed the release attached as Exhibit A to this Plan (the “Release”) and has delivered such Release to the Debtor. Notwithstanding the foregoing, nothing in this Article requires any Personal Injury Claimant to release any Personal Injury Claims against any Person who is not a Settling Party and such Claims are expressly reserved. Any distribution to a Class 1 Claimant is not intended as full compensation for damages suffered and only settles and satisfies that percentage of the Class 1 Claimant’s total claims attributable to the Settling Parties. In no event may a Personal Injury Claimant collect on that portion of any judgment or obtain any reallocation of any judgment based on the causal fault or share of liability of any Settling Party. Any Person that is or was alleged to be a joint tortfeasor with any of the Settling Parties in connection with the Building Collapse that forms the basis of a Personal Injury Claim shall be provided by the attorneys for the Debtor with a copy of the executed Release upon reasonable request and shall not be liable for any Settling Parties’ share of liability or fault. The release of these Class 1 Claims is pursuant to the principles set forth in *Pierringer v. Hoger*, 124 N.W.2d 106 (Wis. 1963) and *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978).

(e) **Dismissal of Pending Litigation.** Within 21 days after the Effective Date, all Claims arising out of or related to Class 1 Claims asserted in any lawsuit against any Settling

Party currently pending in state court shall be dismissed with prejudice and without fees or costs being recoverable against any Settling Party or by any Settling Party against the Class 1 Claimant.

## **5.2. BUSINESS INTERRUPTION AND PROPERTY DAMAGE CLAIMS (CLASS 2).**

(a) **Definition.** A Class 2 Claim means a Business Interruption and Property Damage Claim. A “Class 2 Claimant” shall mean a holder of a Class 2 Claim.

(b) **Summary.** The Plan creates a Claimants’ Fund to fund payments to Class 2 Claimants entitled to such payments under the Plan. Class 2 Claimants’ share of the Claimants’ Fund is the only amount, if any, they will be entitled to receive from the Settling Parties. Distribution from the Claimants’ Fund does not preclude claims or recoveries by Business Interruption and Property Damage Claimants against Persons who are not Settling Parties for the liability of such Persons not attributable to the causal fault or share of liability of the Settling Parties. Any Person that is or was alleged to be a joint tortfeasor with any of the Settling Parties in connection with the Building Collapse that forms the basis of a Business Interruption and Property Damage Claim shall not be liable for any Settling Parties’ share of causal liability or fault.

(c) **Treatment.** The Settling Parties liability for and obligation to pay, if any, Class 2 Claims shall be released. The holder of a Class 2 Claim will receive, in full satisfaction of such Claim: (a) a single Cash payment of 20% of the Allowed amount of the Claim; (b) payment as otherwise agreed in writing by the holder of the Allowed Claim; or (c) payment as ordered by the Bankruptcy Court. The Settling Parties shall have no further liability in connection with Class 2 Claims.

(d) **Release and Certification.** No Class 2 Claimant shall receive any payment on any award unless and until such Class 2 Claimant has executed the Release attached as Exhibit A to this Plan and delivered such Release to the Debtor. Notwithstanding the foregoing, nothing in this Article requires any Business Interruption and Property Damage Claimant to release any Business Interruption and Property Damage Claims against any Person who is not a Settling Party and such Claims are expressly reserved. Any distribution to a Class 2 Claimant is not intended as full compensation for damages suffered and only settles and satisfies that percentage of the Class 2 Claimant’s total claims attributable to the Settling Parties. In no event may a Business Interruption and Property Damage Claimant collect on that portion of any judgment or obtain any reallocation of any judgment based on the causal fault or share of liability of any Settling Party. Any Person that is or was alleged to be a joint tortfeasor with any of Settling Parties in connection with the Building Collapse that forms the basis of a Business Interruption and Property Damage Claim shall be provided by the attorneys for the Debtor with a copy of the executed Release upon reasonable request and shall not be liable for any Settling Parties’ share of liability or fault. The release of these Class 2 Claims is pursuant to the principles set forth in *Pierringer v. Hoyer*, 124 N.W.2d 106 (Wis. 1963) and *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978).

(e) **Dismissal of Pending Litigation.** Within 21 days after the Effective Date, all Claims arising out of or related to Class 2 Claims asserted in any lawsuit against any Settling Party currently pending in state court shall be dismissed with prejudice and without fees or costs being recoverable against any Settling Party or by any Settling Party against the Class 2 Claimant.

### 5.3. SUBROGATION CLAIMS (CLASS 3).

(a) **Definition.** A Class 3 Claim means a Subrogation Claim. A “Class 3 Claimant” shall mean a holder of a Class 3 Claim.

(b) **Summary.** The Plan creates a Claimants’ Fund to fund payments to Class 3 Claimants entitled to such payments under the Plan. Class 3 Claimants’ share of the Claimants’ Fund is the only amount, if any, they will be entitled to receive from the Settling Parties. Distribution from the Claimants’ Fund does not preclude claims or recoveries by Subrogation Claimants against Persons who are not Settling Parties for the liability of such Persons not attributable to the causal fault or share of liability of the Settling Parties. Any Person that is or was alleged to be a joint tortfeasor with any of the Settling Parties in connection with the Building Collapse that forms the basis of a Subrogation Claim shall not be liable for any Settling Parties’ share of causal liability or fault.

(c) **Treatment.** The Settling Parties liability for and obligation to pay, if any, Class 3 Claims shall be released. The holder of a Class 3 Claim will receive, in full satisfaction of such Claim: (a) a single Cash payment of 11.353% of the Allowed amount of the Claim; (b) payment as otherwise agreed in writing by the holder of the Allowed Claim; or (c) payment as ordered by the Bankruptcy Court. The Settling Parties shall have no further liability in connection with Class 3 Claims.

(d) **Release and Certification.** No Class 3 Claimant shall receive any payment on any award unless and until such Class 3 Claimant has executed the Release attached as Exhibit A to this Plan and delivered such Release to the Debtor. Notwithstanding the foregoing, nothing in this Article requires any Subrogation Claimant to release any Subrogation Claims against any Person who is not a Settling Party and such Claims are expressly reserved. Any distribution to a Class 3 Claimant is not intended as full compensation for damages suffered and only settles and satisfies that percentage of the Class 3 Claimant’s total claims attributable to the Settling Parties. In no event may a Subrogation Claimant collect on that portion of any judgment or obtain any reallocation of any judgment based on the causal fault or share of liability of any Settling Party. Any Person that is or was alleged to be a joint tortfeasor with any of the Settling Parties in connection with the Building Collapse that forms the basis of a Subrogation Claim shall be provided by the attorneys for the Debtor with a copy of the executed Release upon reasonable request and shall not be liable for any Settling Parties’ share of liability or fault. The release of these Class 3 Claims is pursuant to the principles set forth in *Pierringer v. Hoyer*, 124 N.W.2d 106 (Wis. 1963) and *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978).

(e) **Dismissal of Pending Litigation.** Within 21 days after the Effective Date, all Claims arising out of or related to Class 3 Claims asserted in any lawsuit against any Settling Party currently pending in state court shall be dismissed with prejudice and without fees or costs being recoverable against any Settling Party or by any Settling Party against the Class 3 Claimant.

#### **5.4. PENALTY CLAIMS (CLASS 4).**

(a) **Definition.** A “Class 4 Claim” means the claims of the United States Department of Labor, Occupational Safety and Health Administration (OSHA) represented by Claim No. 2-1 filed in the Chapter 11 Case on July 25, 2018.

(b) **Treatment.** A Class 4 Claim will not receive a distribution of any Property or interest in Property under the Plan as Class 4 Claims are subordinated to Classes 1, 2, and 3 under the terms of Sections 510(c) and *Schultz Broadway Inn v. United States*, 912 F.2d 230 (8th Cir. 1990).

#### **5.5. CONTRIBUTION CLAIMS (CLASS 5).**

(a) **Definition.** A Class 5 Claim means any contingent contribution and indemnity claim against the Debtor.

(b) **Treatment.** All Class 5 Claims will be disallowed under 502(e)(1)(C) and there will be no distribution to holders of any Class 5 Claims.

#### **5.6. INTERESTS (CLASS 6).**

(a) **Treatment.** The holders of Interests in the Debtor shall retain their Interests but shall not receive a distribution of any Property or interest in Property under the Plan. Upon the entry of a Final Decree, the Debtor will be wound up and dissolved under the provisions of applicable state law within a reasonable amount of time.

#### **5.7. PROMISSORY NOTE CLAIMS (CLASS 7).**

(a) **Definition.** A Class 7 Claim means the Paragon Development and Consulting Services, LLC promissory note claim against the Debtor, listed on Schedule E/F, Section 3.13, ECF No. 1.

(b) **Treatment.** Class 7 Claims will receive no distribution. The Class 7 claimant waives its claim as a contribution to the Claimants’ Fund.

### **ARTICLE VI** **MEANS OF IMPLEMENTATION OF THE PLAN**

**6.1. ESTABLISHMENT OF CLAIMANTS’ FUND AND FUNDING.** After the Confirmation Date, the Debtor will establish the Claimants’ Fund, which may be held in the Debtor’s existing bank account and which will be held and administered in accordance with the Plan and the Confirmation Order. The Claimants’ Fund will include the following:

(a) **Hultgren Construction Parties and Members Contribution.** Pursuant to the Acuity Agreement and as set forth in the Plan, the Hultgren Construction Parties shall sell the Acuity Policy, free and clear of all claims, liens and interest, to Acuity for \$2,000,000 and shall contribute the proceeds of the sale, less the amount of the Administrative Claims Reserve, to the Claimants’ Fund.

(b) Property Owner Parties' Contribution. Cincinnati, on behalf of the Property Owner Parties, shall pay \$1,150,000.

(c) Developer Parties Contribution. United Fire, on behalf of the Developer Parties, shall pay \$1,000,000.

(d) Further Contributions of the Contributing Parties. The contributions by the Members, the Property Owner Parties, and Developer Parties shall also include the consent to disallowance of all contribution and indemnity claims filed by such parties in this Chapter 11 case and the waiver of Class 7 claims.

**6.2. ESTABLISHMENT OF ADMINISTRATIVE CLAIMS RESERVE.** The Debtor shall establish the Administrative Claims Reserve, which may be held in the Debtor's existing bank account and which will be treated as restricted funds.

## **ARTICLE VII**

### **SETTLING INSURERS**

#### **7.1. JUDGMENT REDUCTION.**

(a) In any proceeding, suit, or action to recover or obtain insurance coverage or proceeds for a Collapse Claim from an insurer that is not a Settling Insurer ("Other Insurer"), the following shall apply:

(1) If any Person bound by the Plan obtains a judgment against the Other Insurer, the judgment shall automatically be reduced by the amount, if any, that all Settling Insurers would have been liable to pay such Other Insurer as a result of the Other Insurer's related insurance claim against a Settling Insurer(s). To ensure that such a reduction is accomplished, (a) any Person bound by the Plan pursuing the related insurance claim shall inform the Other Insurer of the existence of this judgment reduction provision at the time a claim is first asserted against the Other Insurer; (b) the Other Insurer's related insurance claim against a Settling Insurer may be asserted as a defense in any proceeding, suit, or action to obtain insurance coverage or proceeds from that Other Insurer for a Collapse Claim; and (c) to the extent the Other insurer's related insurance claim against a Settling Insurer is determined to be valid by the court presiding over such action, the liability of the Other Insurer shall be reduced dollar for dollar by the amount so determined.

(2) If, for any reason, any Other Insurer asserts a claim against a Settling Insurer that it is entitled to obtain a sum certain from any of the Settling Insurer as a result of a related insurance claim, the Person who obtained a judgment or settlement against the Other Insurer shall reduce its judgment or Claim against, or settlement with, such Other Insurer to the extent necessary to satisfy such claims against the Settling Insurer. To ensure that such a reduction is accomplished, the Settling Insurer shall be entitled to assert this provision as a defense to any action against them brought by any Other Insurer and shall be entitled to request that the court or appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect the Settling Insurer from any liability for claim.

(b) Each Settling Insurer agrees that it will not pursue any claim that it might have against any Other Insurer who does not assert a claim against a corresponding Settling Insurer. Notwithstanding the foregoing, if a Person pursues a claim against a Settling Insurer, then such Settling Insurer shall be free to assert its claims against such Person.

**7.2. INDEMNIFICATION OBLIGATIONS.** From and after the Effective Date, the Collapse Claimants shall (i) assume the defense of and pay for reasonable attorneys' fees and costs and other defense-related expenses; and (ii) defend, indemnify, and hold harmless the Settling Parties with respect to any Claim that arises from the Collapse Claimant's respective Collapse Claim, including an Extra-Contractual Claims, Medicare Claim, Medicaid claim, healthcare liens, other lien claims, or Claims for defense, indemnity, contribution, subrogation, or similar relief or any direct action or claim. These obligations shall be interpreted in accordance with *Pierringer v. Hoyer*, 124 N.W.2d 106 (Wis. 1963), and *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978), and the principles enunciated therein.

**7.3. WAIVERS, CONSENTS, AND FEES.**

(a) In consideration of the releases and injunctions and other covenants set forth herein, subject to the occurrence of the Effective Date, the Hultgren Construction Parties and Released Parties:

(1) Irrevocably and unconditionally, without limitation, release, acquit, forever discharge, and waive any Claims and/or Interests they have or might have now or in the future against the other Settling Parties with respect to any and all Related Insurance Claims, any contribution, subrogation, indemnification, or other similar Claim arising from or relating to Collapse Claims, and any Settling Insurer Policies; and

(2) Consent to the sale of the Hultgren Construction Parties' and Members' rights, Claims and/or Interests, if any, in the Acuity Policy in accordance with the Acuity Agreement and to the contribution of the proceeds from such sale and settlement to the Estate, as provided in the Plan.

(b) In consideration of the releases and injunctions and other covenants set forth herein, subject to the occurrence of the Effective Date, each of the Settling Parties irrevocably and unconditionally, without limitation, releases, acquits, forever discharges, and waives any Interests they have or might have now or in the future against the other Settling Parties with respect to any and all Related Insurance Claims, any contribution and indemnity claims arising from or relating to Collapse Claims, and any Settling Insurer Policy.

**ARTICLE VIII**  
**PROCEDURES FOR GENERAL CLAIMS ADMINISTRATION**

**8.1. RESERVATION OF RIGHTS TO OBJECT TO CLAIMS.** Unless a Claim is expressly described as an Allowed Claim pursuant to or under the Plan, or otherwise becomes an Allowed Claim prior to the Effective Date, upon the Effective Date, the Debtor or any other Party In Interest, shall be deemed to have a reservation of any and all rights, Interests, and objections of the Debtor or the Estate to any and all Claims and motions or requests for the payment of or on account of Claims, whether administrative expense, including Professional Claims; priority;

secured; or unsecured, including any and all rights, Interests and objections to the validity or amount of any and all alleged Claims, Liens, and Interests, whether under the Bankruptcy Code, other applicable law, or contract. The failure to object to any Claim in this Chapter 11 case shall be without prejudice to the Debtor's or any other Party In Interest, right to contest or otherwise defend against such Claim in the Bankruptcy Court as set forth in this Section when and if such Claim is sought to be enforced by the holder of such Claim.

**8.2. OBJECTIONS TO CLAIMS.** Prior to the Effective Date, the Debtor shall have the authority to pursue any objection to the allowance of any Claim. From and after the Effective Date, the Debtor will retain responsibility for administering, disputing, objecting to, compromising, or otherwise resolving and making distributions, if any, with respect to Claims (including those claims that are subject to objection by the Debtor as of the Effective Date); provided, however, that nothing in this Section shall affect the right of any Party In Interest to object to any Claim to the extent such objection is otherwise permitted by the Bankruptcy Code, the Bankruptcy Rules, and this Plan. Unless otherwise provided in the Plan or by order of the Bankruptcy Court, any objections by the Debtor or any other Party In Interest to Claims will be filed and served not later than thirty (30) days after the later of: (i) the Effective Date, or (ii) the date such claim is filed. Such deadline or any Bankruptcy Court approved extension thereof, may be extended upon request by the Debtor by filing a motion without any requirement to provide notice to any Person, based upon a reasonable exercise of the Debtor's business judgment. A motion seeking to extend the deadline to object to any claim shall not be deemed an amendment to the Plan.

**8.3. DETERMINATION OF CLAIMS.** Except as otherwise agreed by the Debtor, any Claim as to which a proof of claim or motion or request for payment was timely filed in this case can be determined and liquidated pursuant to (i) a Final Order of the Court, or (ii) a Final Determination under applicable non-bankruptcy law, and will be deemed in such liquidated amount and satisfied in accordance with this Plan. Except as otherwise provided in the Plan and Acuity Agreement, nothing contained in the Plan, Disclosure Statement, or the Confirmation Order will constitute, or be deemed a waiver of, any claim, right, interest, or Cause of Action that the Debtor or the Debtor's Estate can have against any Person in connection with, or arising out of any claim or claims, including without limitation any rights under 28 U. S .C. § 157.

On and after the Effective Date, the Debtor will have the authority to assert, compromise, settle, otherwise resolve, or withdraw any objections to Claims, and compromise, settle, or otherwise resolve any other form of contested Claims, without further approval of the Bankruptcy Court. If a counterparty in such matters requests a court order memorializing a compromise or settlement, however, the Debtor will undertake reasonable actions needed to secure one. Notice must be provided to the United States via a letter to the Assistant U.S. Attorney for the Southern and Western Divisions of the District of South Dakota regarding any compromise, settlement, or resolution contrary to the Plan after the Effective Date. If the United States has an objection to the compromise, settlement, or resolution then the Debtor must seek Court approval for such compromise, settlement, or resolution.

**8.4. NO DISTRIBUTIONS PENDING ALLOWANCE.** No payments or distributions will be made with respect to a Disputed Claim, or any portion thereof, unless and until all objections to such Disputed Claim have been settled or withdrawn or have been

determined by an order which has become a Non-Appealable Order, and the Disputed Claim has become an Allowed Claim.

**8.5. CLAIM ESTIMATION.** To effectuate distributions pursuant to the Plan and avoid undue delay in the administration of the Chapter 11 case, with respect to Disputed Claims, the Debtor, after notice and a hearing (which notice may be limited to the holder of such Disputed Claim), shall have the right to seek an order of the Bankruptcy Court or the District Court, pursuant to Bankruptcy Code Section 502(c), estimating or limiting the amount of: (i) property that must be withheld from or reserved for distribution purposes on account of such Disputed Claim(s), (ii) such claim for allowance or disallowance purposes, or (iii) such claim for any other purpose permitted under the Bankruptcy Code; provided, however, that the Bankruptcy Court or the District Court, as applicable, shall determine: (y) whether such claims are subject to estimation pursuant to Bankruptcy Code Section 502(c), and (z) the timing and procedures for such estimation proceedings, if any, such matters being beyond the scope of the Plan.

## **ARTICLE IX**

### **DISTRIBUTIONS UNDER THE PLAN**

**9.1. PAYMENT DATE.** Whenever any payment or distribution to be made under the Plan shall be due on a day other than a business day, such payment or distribution shall instead be made, without interest, on the immediately following business day.

**9.2. UNDELIVERABLE DISTRIBUTIONS.** If payment or distribution to the holder of an allowed Claim under the Plan is returned for lack of a current address for the holder or otherwise, the Debtor shall file with the Bankruptcy Court the name, if known, and last known address of the holder and the reason for its inability to make payment. All allowed claims paid as provided in this Section shall be deemed addressed to the same extent as if payment or distribution had been made to the holder of the allowed claim with no recourse to Debtor. If, after the passage of six (6) months, the payment or distribution still cannot be made, the Debtor shall make a pro rata payment to the other claimants. If a Class 1, 2, or 3 Claimant refuses to sign the Release ("Refusing Claimant"), after the passage of six (6) months, the Debtor shall make a pro rata payment of the amount allocated to the Refusing Claimant to the other claimants. The Refusing Claimant will not receive any distribution on account of the Refusing Claimant's Claim. All allowed claims paid as provided in this Section shall be deemed satisfied and released, with no recourse to the Debtor, upon payment to the Claimants' Fund, to the same extent as if payment or distribution has been made to the holder of the allowed claim.

**9.3. SETOFFS.** The Debtor may, to the extent permitted under applicable law, ordered by the bankruptcy court, and agreed to by the impacted party, set off against any allowed claim and the distributions to be made pursuant to the Plan on account of such allowed claim, the claims, rights and Causes of Action of any nature that the Debtor may hold against the holder of such allowed claim that are not otherwise waived, released or compromised in accordance with the Plan; provided, however, that neither such a setoff nor the allowance of any claim hereunder shall constitute a waiver or release by the Debtor of any such claims, rights, and Causes of Action that the Debtor possesses against such holder.

**9.4. NO INTEREST ON CLAIMS.** Unless otherwise specifically provided for in the Plan, the Confirmation Order, or a post-petition agreement in writing between a claimant and the Debtor and approved by an order of the Bankruptcy Court, post-petition interest shall not accrue or be paid on any claim, and claimant shall not be entitled to interest accruing on or after the Petition Date on any claim. In addition, and without limiting the foregoing or any other provision of the Plan or Confirmation Order, interest shall not accrue on or be paid on any Disputed Claim in respect of the period from the Effective Date to the date a final distribution is made when and if such Disputed Claim becomes an allowed claim.

**9.5. WITHHOLDING TAXES.** The Debtor shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions hereunder shall be subject to any such withholding and reporting requirements. As a condition to making any distribution under the Plan, the Debtor may require that the holder of an allowed claim provide such holder's taxpayer identification number and such other information and certification as may be deemed necessary to comply with applicable tax reporting and withholding laws.

## **ARTICLE X**

### **EFFECTIVENESS OF THE PLAN**

**10.1. CONDITIONS TO OCCURRENCE OF EFFECTIVE DATE.** The Plan shall not become effective unless and until each of the following conditions shall have been satisfied in full in accordance with the provisions specified below:

(a) **Entry of Confirmation Order.** The Confirmation Order has become a Non-Appealable Order;

(b) **Acuity Agreement.** (i) The Debtor and Acuity shall have executed the Acuity Agreement, (ii) the Bankruptcy Court enters an order approving the Acuity Agreement, either as part of the Confirmation Order or by separate order, and (iii) said order approving the Acuity Agreement shall have become a Non-Appealable Order; and

(c) **Payments.** The payments discussed in Section 6.1 shall have been received by the Debtor and the payments discussed in Article IV shall have been received by the Claimants.

**10.2. NOTICE OF EFFECTIVE DATE.** The Debtor shall file a Notice of Effective Date with the Bankruptcy Court within three (3) days after the occurrence of the Effective Date. Such notice will include all relevant deadlines put into effect by the occurrence of the Effective Date.

**10.3. EFFECT OF NON-OCCURRENCE OF CONDITIONS.** If substantial consummation of the Plan does not occur, the Plan will be null and void in all respects and nothing contained in the Plan or the disclosure statement will: (i) constitute a waiver or release of any claims by or against the Settling Parties or any Claimant; (ii) prejudice in any manner the rights of the Settling Parties or any Claimant; (iii) constitute an admission, acknowledgement, offer, or undertaking by the Settling Parties or any Claimant in any respect, including but not limited to, in any proceeding or case against the Debtor; or (iv) be admissible in any action, proceeding or case against the Settling Parties or any Claimant in any court or other forum.

**ARTICLE XI**  
**EFFECTS OF CONFIRMATION**

**11.1. POST-CONFIRMATION DUTIES OF THE DEBTOR; DISSOLUTION OF THE DEBTOR.** After the Effective Date, the Debtor shall continue to exist solely for the purposes of carrying out the provisions of the Plan, the completion and filing of all state, local and final franchise and income tax returns required by the United States and the State of South Dakota, and resolution of all non-bankruptcy matters with the United States of America and any agency thereof and the State of South Dakota, including, but not limited to, any ongoing investigation by a federal or state agency, the administrative civil matter presently stayed before the Department of Labor, or both. After all such final tax returns have been filed and all pending non-bankruptcy matters or investigations are resolved, the Debtor shall be deemed dissolved for all purposes without the necessity for any other or further actions to be taken by or on behalf of the Debtor or payments to be made in connection therewith; provided, however, that the Debtor shall file with the office of the South Dakota Secretary of State, a certificate of dissolution that may be executed by Melissa Bailey without the need for approval by the members. Such certificate of dissolution, however, may not be filed prior to the filing of the final tax returns and the resolution of all pending non-bankruptcy matters or investigations. From and after the Effective Date, the Debtor shall not be required to file any document, or take any other action, or obtain any approval from its members, to withdraw its business operations from any state in which the Debtor previously conducted its business operations. Sixty days following the filing of the Debtor's certificate of dissolution, or such longer period as may be approved by the Bankruptcy Court, Melissa Bailey shall no longer be deemed to occupy any position with the Debtor, including but not limited to Authorized Representative. For the avoidance of doubt, the automatic stay will no longer be applicable following the Confirmation Date.

**11.2. NO DISCHARGE.** Pursuant to Bankruptcy Code Section 1141(d)(3), Confirmation will not discharge Claims against the Debtor.

**11.3. SETTLING INSURER PERMANENT INJUNCTION.** Pursuant to Bankruptcy Code Sections 105(a) and 363 and Bankruptcy Rule 9019—and in consideration of the undertakings of the Settling Insurers—all Persons who have held, hold, or may hold Enjoined Claims against the Settling Insurers, whether known or unknown, and their respective members, directors, officials, representatives, employees, accountants, agents, attorneys, and all others acting for or on their behalf, will be permanently enjoined on and after the Effective Date from:

(a) Commencing or continuing in any manner any action or any other proceeding of any kind with respect to any Claim, including but not limited to any Enjoined Claim, against the Settling Insurers or the property of the Settling Insurers;

(b) Seeking the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Settling Insurers or the property of the Settling Insurers, with respect to any Enjoined Claim;

(c) Creating, perfecting, or enforcing any lien or encumbrance of any kind against any Settling Insurer or the property of any Settling Insurer with respect to any Enjoined Claim;

(d) Asserting, implementing or effectuating any Enjoined Claim of any kind against:

(1) Any obligation due by any of the Settling Insurers;

(2) Any Settling Insurer; or

(3) The property of any Settling Insurer;

(e) Asserting or accomplishing any setoff, right of indemnity, subrogation, contribution, or recoupment of any kind against any obligation due any of the Settling Insurers or the property of any of the Settling Insurers with respect to any Enjoined Claim; and

(f) Taking any act, in any manner and in any place whatsoever, that does not conform to or comply with provisions of the Plan or the Plan Documents.

(g) For the avoidance of doubt: (1) nothing in this Section 11.3 shall limit the provisions of Section 11.1; (2) to the extent there is conflict between the two sections, the terms of Section 11.1 shall prevail; and (3) the injunctions contained in Section 11.3 apply in favor of only the Settling Insurers and no other Party In Interest.

**11.4. SUPPLEMENTAL INSURER INJUNCTION PREVENTING PROSECUTION OF CLAIMS.** Pursuant to Bankruptcy Code Sections 105(a) and 363 and in consideration of the undertakings of Acuity pursuant to the Acuity Agreement, including Acuity's purchase of the Acuity Policy free and clear of all interests pursuant to Bankruptcy Code Section 363(f), any and all Persons who have held, now hold or who may in the future hold any Interests (including all debt holders, all equity holders, all Persons holding a Claim, governmental, tax and regulatory authorities, lenders, trade and other creditors, Collapse Claimants, and all others holding Interests of any kind or nature whatsoever, including those Claims released or to be released pursuant to the Acuity Agreement) against Acuity, which, directly or indirectly, relate to the Acuity Policy or any Collapse Claims are hereby permanently stayed, enjoined, barred, and restrained from taking any action, directly or indirectly, to assert, enforce or attempt to assert or enforce any such Interest against Acuity except as set forth in the Acuity Agreement, including:

(a) Commencing or continuing in any manner any action or other proceeding, whether legal, equitable or otherwise against Acuity or the property of Acuity;

(b) Enforcing, attaching, collecting, or recovering, by any manner or means, any judgment, award, decree or order against Acuity or the property of Acuity;

(c) Creating, perfecting, or enforcing any lien of any kind against Acuity;

(d) Asserting or accomplishing any setoff, right of indemnity, subrogation, contribution, or recoupment of any kind against any obligation due to Acuity; and

(e) Taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan, Confirmation Order, or the Acuity Agreement.

(f) For the avoidance of doubt: (1) nothing in this Section 11.4 shall limit the provisions of Section 11.1; (2) to the extent there is conflict between the two sections, the terms of Section 11.1 shall prevail; and (3) the injunctions contained in Section 11.4 apply in favor of only Acuity and no other Party In Interest.

**11.5. INJUNCTIONS INTEGRAL.** The foregoing injunctive provisions are an integral part of the Plan and are essential to its implementation. Any and all currently pending court proceedings, the continuation of which would violate the provisions of Article 11 of the Plan, shall be dismissed with prejudice. For the avoidance of doubt, nothing in this Section 11.5 shall limit the provisions of Section 11.1. To the extent there is conflict between the two sections, the terms of Section 11.1 shall prevail.

**11.6. INJUNCTION DEEMED ISSUED AND PERMANENT.** On the Effective Date, the injunctions provided herein shall be deemed issued, entered, valid and enforceable according to their terms and shall be permanent and irrevocable. All injunctions and/or stays provided herein, the injunctive provisions of Bankruptcy Code Sections 524 and 1141, and all injunctions or stays protecting the Settling Insurers are permanent and will remain in full force and effect following the Effective Date and are not subject to being vacated or modified.

**11.7. EXCULPATION; LIMITATION OF LIABILITY.** Except as expressly provided in the Plan, the Debtor will not have and will not incur any liability to—or be subject to any right of action by—any claimant; Party In Interest; other entity, including any governmental entity or insurer; or any of their respective Representatives, financial advisors, affiliates, successors, or assigns for any act or omission in connection with, relating to, or arising out of the Chapter 11 case, including the exercise of its respective business judgment; the performance of its respective fiduciary obligations; the pursuit of confirmation of the Plan; the payments to be made to Collapse Claimants, including any liability under the MSPA; the administration of the Plan; or the property to be distributed under the Plan, except for their willful misconduct or gross negligence and in all respects such parties will be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities under the Plan or in the Chapter 11 case. Without limiting the generality of the foregoing, the Debtor and its professionals shall be entitled to and granted the benefits of Bankruptcy Code Section 1125(e). For the avoidance of doubt: (1) nothing in this Section 11.7 shall limit the provisions of Section 11.1; and (2) to the extent there is conflict between the two sections, the terms of Section 11.1 shall prevail.

**ARTICLE XII**  
**MISCELLANEOUS PROVISIONS**

**12.1. RETENTION OF JURISDICTION**

(a) **By the Bankruptcy Court.** Pursuant to Bankruptcy Code Sections 105, 1123(a)(5), and 1142(b), and 28 U.S.C. Sections 1334 and 157, on and after the Effective Date, the Bankruptcy Court shall retain: (i) original and exclusive jurisdiction over this Chapter 11 case, (ii) original, but not exclusive, jurisdiction to hear and determine all core proceedings arising under the Bankruptcy Code or arising in this Chapter 11 case, and (iii) original, but not exclusive, jurisdiction to hear and make proposed findings of fact and conclusions of law in any non-core proceedings related to this Chapter 11 case and the Plan, including matters concerning the interpretation, implementation, consummation, execution, or administration of the Plan. Subject to, but without limiting the generality of the foregoing, the Bankruptcy Court's post-Effective Date jurisdiction shall include jurisdiction:

- (1) over disputes concerning the ownership of claims;
- (2) over disputes concerning the distribution or retention of assets under the Plan;
- (3) over objections to claims, motions to allow late-filed claims, and motions to estimate claims;
- (4) over proceedings to determine the extent, validity, or priority of any Lien asserted against property of the Debtor;
- (5) over matters relating to the subordination of claims;
- (6) to enter and implement such orders as may be necessary or appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified or vacated;
- (7) to consider and approve modifications of or amendments to the Plan, to cure any defects or omissions or to reconcile any inconsistencies in any order of the Bankruptcy Court, including the Confirmation Order;
- (8) to issue orders in aid of execution, implementation, consummation, or enforcement of the Plan;
- (9) over disputes arising from or relating to the Plan, the Confirmation Order, or any agreements, documents, or instruments executed in connection therewith including, but not limited to, disputes relating to any settlements contained in the Plan and approved under Fed. R. Bankr. P. 9019, the sale of the Acuity Policy under 11 U.S.C. § 363, and the scope and application of any release contained within the Plan;

- (10) over requests for allowance of payment of claims entitled to priority under Bankruptcy Code Sections 507(a)(2) and 503(b)(9) and any objections thereto;
- (11) over all Fee Applications;
- (12) over matters concerning state, local, or federal taxes in accordance with Bankruptcy Code Sections 346, 505, and 1146;
- (13) to issue injunctions, provide declaratory relief, or grant such other legal or equitable relief as may be necessary or appropriate to restrain interference with the Plan, the Debtor, the Professionals, or the Confirmation Order;
- (14) to enter a Final Decree closing the Chapter 11 case;
- (15) to enforce all orders previously entered by the Bankruptcy Court; or
- (16) over any and all other suits, adversary proceedings, motions, applications, and contested matters that may be commenced or maintained pursuant to this Chapter 11 case or the Plan.

(b) **By the District Court.** Pursuant to Bankruptcy Code Sections 105, 1123(a)(5), and 1142(b), and 28 U.S.C. Section 1334, on and after the Effective Date, the District Court shall retain original, but not exclusive, jurisdiction to hear and determine all matters arising under the Bankruptcy Code or arising in or related to this Chapter 11 case.

**12.2. AMENDMENTS AND MODIFICATIONS.** The Debtor may modify the Plan at any time prior to the confirmation hearing in accordance with Bankruptcy Code Section 1127(a). After the Confirmation Date and prior to substantial consummation, the Debtor may modify the Plan in accordance with Bankruptcy Code Section 1127(b) by filing a motion on notice as required under the applicable Bankruptcy Rules. Notwithstanding the foregoing, no modification to the Plan shall be made without the consent of the Settling Insurers.

**12.3. NON-SEVERABILITY.** Except as specifically provided herein, the terms of the Plan constitute interrelated compromises and are not severable, and no provision of the Plan may be stricken, altered, or invalidated, except by amendment of the Plan by the Debtor.

**12.4. FINAL DECREE.** Once the Estate has been fully administered, as referred to in Bankruptcy Rule 3022, the Debtor's professionals shall file a motion with the Bankruptcy Court to obtain a Final Decree to close the Chapter 11 case.

**12.5. PLAN AS SETTLEMENT COMMUNICATION.** The Plan furnishes or offers or promises to furnish (or accepts or offers or promises to accept) valuable consideration in compromising or attempting to compromise claims and Causes of Action that are disputed as to validity or amount (including Collapse Claims), except as otherwise provided above. Accordingly, the Plan, the disclosure statement, and any communications regarding the Plan or the disclosure statement are subject in all respects to Federal Rule of Evidence 408 and any comparable

provision(s) of applicable state law precluding their use as evidence of liability for, or the validity or invalidity of, any Disputed Claim or Cause of Action. Nothing herein or in any Confirmed Plan is intended to constitute a compromise of a Collapse Claim.

**ARTICLE XIII**  
**BANKRUPTCY RULE 9019 REQUEST**

Pursuant to Bankruptcy Rule 9019 and through the Plan, the Debtor requests approval of all compromises and settlements included in the Plan.

**ARTICLE XIV**  
**CONFIRMATION REQUEST**

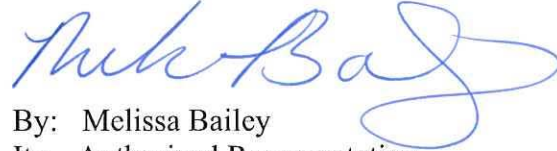
The Debtor requests confirmation of the Plan under Bankruptcy Code Section 1129(b) with respect to any impaired class that does not accept the Plan or is deemed to reject the Plan.

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[Signature page for Plan of Liquidation]

Respectfully submitted,

HULTGREN CONSTRUCTION, LLC



By: Melissa Bailey

Its: Authorized Representative

Dated: 08/02/19

Prepared and Submitted By:

/e/ Bryant D. Tchida

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Debtor and Debtor-in-Possession

**EXHIBIT A**  
**RELEASE**

**To receive compensation under the Plan, you must execute and deliver this Release.**

1. All capitalized terms in this Release are defined terms in the Plan and they have the meanings ascribed to them in the Plan.
2. A condition precedent to this Release is the Court's confirmation of the Plan. Accordingly, this Release is subject in all respects to Federal Rule of Evidence 408 and any comparable provision(s) of applicable state law precluding its use as evidence of liability for, or the validity or invalidity of, any Claim.
3. In consideration of the promise of a distribution, the amount payable to me under the Plan, and other valuable consideration, I, for myself and my heirs, successors, and assigns:
  - a. Hereby fully, finally, and completely release, remise, acquit, and forever discharge the Settling Parties with respect to the Settling Insurer Policies, from any and all past, present, and future Claims that, directly or indirectly, arise out of, relate to, or are in connection with the i) Collapse Claims; ii) the Settling Insurer Policies; and iii) all Claims that, directly or indirectly, arise from, relate to, or are in connection with the Chapter 11 case.
  - b. Hereby covenant (i) not to sue or seek recovery or relief of any kind from the Settling Parties in connection with any and all past, present, and future Claims that, directly or indirectly, arise out of, relate to, or are in connection with the Collapse Claims, the Settling Insurer Policies, or the Chapter 11 case; (ii) to forever and irrevocably discharge that fraction, portion or percentage of damages I claim to have suffered in connection with any Collapse Claim which is by trial or other disposition determined to be the causal fault or responsibility, if any, of any Settling Party; (iii) to voluntarily reduce any judgment that I may ever obtain against any Person relating to the same Claim at issue in the Collapse Claims in an amount reflecting that fraction, portion or percentage of damage or injury that I suffered due to the causal fault or responsibility, if any, of any Settling Party; (iv) that filing of this Release with any court by any Settling Party shall satisfy that fraction, portion or percentage of any judgment that may be rendered in my favor attributable to any Settling Party's causal fault or responsibility; (v) that I will not seek a reallocation of the causal fault or causal responsibility of any Settling Party to any other Person whether assessed by reason of judgment or settlement; and (vi) this extinguishes any potential liability of any Settling Party for contribution or indemnity to any Person who has been or may be held liable to me for any Collapse Claim.
  - c. From and after the Effective Date, I shall (i) assume the defense of and pay for reasonable attorneys' fees and costs and other defense-related expenses; and (ii)

defend, indemnify, and hold harmless the Settling Parties with respect to any Claim that arises from my respective Collapse Claim, including an Extra-Contractual Claims, Medicare Claim, Medicaid claim, health care liens, other lien claims, or Claim for defense, indemnity, contribution, subrogation, or similar relief or any direct action or claim. These obligations shall be interpreted in accordance with *Pierringer v. Hoger*, 124 N.W.2d 106 (Wis. 1963), and *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978), and the principles enunciated therein.

3. I have been provided with copies of the Disclosure Statement, the Plan and the exhibits thereto and have been given an opportunity to review such documents.
4. I expressly preserve and retain, and do not waive, any of my rights to recover from any Person for liability for any Collapse Claim except as provided in this Release and do not intend that payment under the Plan constitutes full compensation for the damage alleged in my Collapse Claim(s).
5. I intend the foregoing undertakings to accord with the principles set forth in *Pierringer v. Hoger*, 124 N.W.2d 106 (Wis. 1963) and *Frey v. Snelgrove*, 269 N.W.2d 918 (Minn. 1978).
6. I understand and agree that any payment to me does not constitute an admission of liability of any kind or nature by any Settling Party.
7. I consent to, and agree to be bound by, the Injunctions and exculpations set forth in Article XI of the Plan, including the injunctive relief for the benefit of the Settling Insurers (including Acuity) under Section 11.3 and Acuity (but excluding the other Settling Insurers) under Section 11.4. I also approve of the Acuity Agreement approved by the Confirmation Order and attached as an Exhibit to the Plan.
8. I represent and warrant that I have not assigned or otherwise transferred any interest in my Collapse Claim(s).
9. I have or will provide for the payment and/or resolution of any obligations owing or potentially owing under the Medicare Secondary Payer Statue relating to my Collapse Claim(s).
10. This Release shall be binding upon my successors, heirs, agents, assigns, and representatives.

TO BE COMPLETED BY CLAIMANT:

Name of Claimant: \_\_\_\_\_

Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

Claim Number(s): \_\_\_\_\_

**EXHIBIT B**  
**ACUITY AGREEMENT**

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is hereby made by, between, and among Hultgren Construction, LLC (the “Debtor”), the Members (as defined below), and Acuity, A Mutual Insurance Company (“Acuity”) (collectively, the “Parties”).

### RECITALS

WHEREAS, the Debtor is a limited liability company which primarily operated a construction business;

WHEREAS, Aaron Hultgren, Norman Drake, Larry E. Canfield, and Paul Cink (collectively, the “Members”) are the members and owners of the Debtor;

WHEREAS, Acuity issued a commercial excess liability and Bis-Pack insurance policy, identified as policy number X87409 (the “Policy”), which provides coverage for bodily injury, property damage or personal and advertising injury on a claims made basis for the policy period of January 20, 2016 through January 20, 2017;

WHEREAS, the Debtor, as the named insured, owns the Policy and, under the Policy’s terms and conditions the following parties are deemed to be insureds (hereinafter, the “Insured Parties”):

- (i) The Debtor is insured;
- (ii) The Members are also insureds, but only with respect to conduct of the Debtor’s business.

WHEREAS, the underlying liability limit on the Policy is \$1,000,000, and the excess liability limit is an additional \$1,000,000. The total amount of insurance proceeds available under the Policy is \$2,000,000;

WHEREAS, on December 2, 2016 a building upon which the Debtor was performing construction work collapsed in Sioux Falls, South Dakota. As a result of this collapse, numerous individuals and entities (the “Claimants”) have asserted claims against certain Insured Parties;

WHEREAS, the claims assert by the Claimants may or may not trigger Acuity’s obligations under the Policy;

WHEREAS, a dispute exists between Acuity and the Insured Parties concerning Acuity’s position regarding the nature and scope of its responsibilities, if any, to provide coverage to the Insured Parties under the Policies;

WHEREAS, on July 18, 2018, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, in the United States Bankruptcy Court for the District of South Dakota (the “Bankruptcy Court”), case no. 18-40329 (the “Bankruptcy Case”);

WHEREAS, in order to resolve all claims and avoid potential litigation, the Debtor brought a Motion for an Order Directing Mediation and Appointing Judge Leif M Clark to Serve as

Mediator (the “Mediation Motion”) in order to compel mediation between itself, Acuity, and other claimants in the Bankruptcy Case;

WHEREAS, on November 9, 2018, the Bankruptcy Court granted the Mediation Motion.

WHEREAS, mediation took place on November 20 and 21, 2018 and ultimately resulted in a global resolution of all claims against the Debtor;

WHEREAS, on February 28, 2019, the Debtor filed Hultgren Construction, LLC’s Modified Plan Dated February 28, 2019 (the “Plan”) and Amended Disclosure Statement with Respect to Hultgren Construction, LLC’s Modified Plan Dated February 28, 2019 (the “Disclosure Statement”).

WHEREAS, pursuant to Section 6.3 the Plan, the Insured Parties consent to the sale of their rights under the Policy, as contemplated herein, and waive any rights they may have under the Policy;

WHEREAS, through this Agreement, the Parties, without any admission of liability, wish to compromise and resolve fully and finally any and all coverage disputes that they may have and all other disputes between the Parties that relate to the Policy;

WHEREAS, through this Agreement, the Parties intend to provide Acuity with the broadest possible release and to provide that Acuity shall have no further obligations, now or in the future, arising out of or in any way related to the Policy;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants contained in this Agreement, the sufficiency of which is hereby acknowledged, and intended to be legally bound, subject to the approval of the Bankruptcy Court, the Parties hereby agree as follows:

#### **I. SALE OF POLICY AND PAYMENT OF SETTLEMENT AMOUNT**

1. Subject to all terms and conditions of this Agreement, in full and final settlement of all responsibilities under and arising out of the Policy and in consideration of the conveyance of the Policy from the Debtor to Acuity:

- i. Acuity shall purchase the Policy from the Debtor and the Debtor shall sell, convey, transfer, and deliver to Acuity, upon payment of \$2,000,000 (the “Settlement Amount”), the Policy and any and all rights under the Policy, free and clear of any and all interests. The interests released are to be construed to the fullest extent permissible under section 363 of the Bankruptcy Code and include, but are not limited to, the interests released under Section III and the interests enjoined by the injunction outlined in paragraph 25 of this Agreement (hereinafter “Interests”);
- ii. Acuity shall pay the Debtor the Settlement Amount within thirty (30) days after the entry of a final order approving this Agreement.

- iii. Upon payment of the Settlement Amount, and upon request of Acuity, the Debtor shall execute and deliver to Acuity a bill of sale evidencing such sale of the Policy to Acuity.
2. The Parties agree that:
    - i. The Settlement Amount is the total amount Acuity is obligated to pay on account of any and all claims of any kind made under or related to the Policy;
    - ii. Under no circumstance will Acuity ever be obligated to make any additional payment to or on behalf of the Insured Parties, or any other person or entity, in connection with the Policy;
    - iii. All limits of liability of the Policy, including all per occurrence and aggregate limits, shall be deemed fully and properly exhausted;
    - iv. The Settlement Amount is the full purchase of the Policy, and upon payment of the Settlement Amount, Acuity shall be deemed to own the Policy free and clear of any and all Interests of any person or entity;
    - v. Subject to the terms or conditions in this Agreement and the approval of the Bankruptcy Court, Acuity shall have no further obligation to the Insured Parties, the Debtor's bankruptcy estate, or any other person or entity that may assert a claim under the Policy; and
    - vi. The Settlement Amount is at least equal to the fair value of the Policy.
  3. Effective immediately upon payment of the Settlement Amount, and without any further action by any of the Parties, all of the rights of the Insured Parties, and any and all other persons or entities that may assert a claim under the Policy, shall be permanently and irrevocably extinguished as if the Policy had never been issued.
  4. Acuity's obligation to purchase the Policy and to pay the Settlement Amount and the Debtor's obligation to sell the Policy are conditioned on:
    - i. Receipt of the mutual release of obligations between the Debtor and Acuity, as set forth in this Agreement;
    - ii. Entry of an order issuing a supplemental, permanent injunction, as set forth in this Agreement;
    - iii. Entry of a final order approving this Agreement by the Bankruptcy Court. Said order will be deemed final when the time to appeal said order has expired and no appeal has been made.

- iv. Entry of a final order confirming the Plan by the Bankruptcy Court. Said order will be deemed final when the time to appeal said order has expired and no appeal has been made.

This Agreement will not be effective until the foregoing conditions are satisfied, although the Parties commit to undertake in good faith to satisfy such conditions.

## **II. BANKRUPTCY-RELATED OBLIGATIONS**

5. Within ten (10) business days after all the Parties have executed this Agreement, the Debtor shall file a motion with the Bankruptcy Court, pursuant to 11 U.S.C. §§ 105 and 363 and the Fed. R. Bankr. P. 6004 and 9019, seeking approval of this Agreement (the “Motion”). The Debtor shall use reasonable best efforts to obtain entry of a final order approving this Agreement.

6. If any proceedings are commenced to invalidate or prevent the enforcement or implementation of any of the provision of this Agreement, the Parties agree to cooperate fully to oppose such proceedings.

7. The Parties shall cooperate with each other in connection with the Motion and the actions necessary to ensure timely approval of the Motion by the Bankruptcy Court. Such cooperation shall include consulting with each other upon reasonable request concerning the status of proceedings and providing each other with copies of reasonably requested pleadings, notices, proposed orders, and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof to the Bankruptcy Court.

8. If the order approving this Agreement, or any other order by the Bankruptcy Court relating to this Agreement, is appealed by any person or entity (or a petition for certiorari or motion for rehearing or re-argument shall be filled with respect thereto), the Parties agree to cooperate and take any steps reasonable to defend against such appeal, petition, or motion. Notwithstanding anything to the contrary in the foregoing, nothing herein shall preclude the Parties from consummating the transactions contemplated herein if an order approving this Agreement is entered and has not been stayed.

9. Each of the Parties further agrees not to take any appeal from, or to seek to reopen, reargue or obtain reconsideration of, or otherwise contest or challenge in any way, directly or indirectly, the order approving this Agreement or any other order provided for by, executed, entered pursuant to, or in implementation of, this Agreement, except to the extent that any such order shall be inconsistent with the terms hereto.

10. The Parties further covenant and agree that the Parties will not submit to the Bankruptcy Court for approval any motion, adversary proceeding, filing, or other request the approval of which could conflict with, supersede, abrogate, nullify, modify or restrict the terms of the Agreement, or in any way prevent or interfere with the consummation or performance of the transaction contemplated by this Agreement.

11. In the event that any person or entity asserts a claim against Acuity, after the entry of an order approving this Agreement, arising out of or related to any matter released by this Agreement, Acuity shall notify the other Parties and the other Parties shall cooperate with Acuity to take any such steps, if any, as Acuity may reasonably request to seek an order from the Bankruptcy Court enjoining such claims.

### III. RELEASES

12. The Debtor's Release of Acuity: Upon entry of a final order approving this Agreement, and without any further action of the Parties, the Debtor hereby fully and completely releases and discharges Acuity from any and all claims, whether actual or alleged, known or unknown, accrued or un-accrued, existing or potential arising out of or in any way related to the Policy. The release of Acuity under this Agreement shall include, but shall not be limited to, any and all claims for coverage with respect to, relating to, or in any way arising out of the Policy whether for property damage, bodily injury, personal injury, advertising injury, or any other form of loss covered, or potentially covered, under the Policy. In addition, the Debtor hereby withdraws any and all requests, demands, or tenders for defense or indemnity previously submitted to Acuity under the Policy and further surrenders, relinquishes, and releases any further right to tender or present any claims whatsoever to Acuity under the Policy.

13. Acuity's Release of Insured Parties: Upon entry of a final order approving this Agreement, and without any further action of the Parties, Acuity hereby fully and completely releases and discharges the Insured Parties from any and all claims, whether actual or alleged, known or unknown, accrued or un-accrued, existing or potentially arising out of or in any way related to the Policy. Acuity also waives any and all rights of subrogation, indemnification, and/or contribution that it has, or may have, against any person or entity as a result of or on account of payment of the Settlement Amount, including without limitation any rights based on any "Other Insurance" clause in the Policy.

14. In furtherance of their express intent to fully and irrevocably release and discharge each other for all claims, known and unknown, as set forth above, each of the Parties expressly waives any and all rights it may have under any contract, statute, code, regulation, ordinance, or common law, which may limit or restrict the effect of a general release as to the claims released herein.

15. By virtue of the foregoing releases, Acuity shall have no duty to defend or indemnify the Insured Parties, or any other person or entity that may be covered under the Policy with respect to any past, present, and/or future claims that may be covered by the Policy. Acuity shall have no other duty or obligation whatsoever to any other person or entity with respect to any and all claims arising out of or in any way related to the Policy.

16. As set forth herein, upon entry of an order approving this Agreement, Acuity shall buy back the Policy free and clear of all Interests of all persons or entities, including all Interests of the

Insured Parties, and any other person or entity claiming coverage by, through, or on behalf of any Insured Party. This sale is pursuant to section 363(b) and 363(f) of the Bankruptcy Code. The Parties acknowledge and agree that:

- i. Acuity is a good faith purchaser of the Policy within the meaning of section 363(m) of the Bankruptcy Code;
- ii. The consideration exchanged constitutes a fair and reasonable settlement of the Parties' disputes and of any other respective rights and obligations relating to the Policy and constitutes reasonably equivalent value; and
- iii. The releases in this Agreement and the policy buyback comply with the Bankruptcy Code and applicable non-bankruptcy law.

17. Neither the releases set forth in this Agreement nor any other provision are intended to apply to or have any effect on Acuity's right to reinsurance recoveries under any reinsurance treaties, certificates, or contracts that cover losses arising under or in connection with the Policy, or any other binder, certificate, or policy of insurance issued, or allegedly issued, by Acuity.

18. The releases set forth in this Agreement are not intended to, and shall not extend to or otherwise release or discharge any rights, benefits, or obligations of any of the Parties arising under this Agreement.

#### IV. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

19. Each of the Parties separately represents and warrants as follows:

- i. Subject to the entry of an order approving this Agreement, it or he has the requisite power to enter into this Agreement and to perform the obligations imposed on it or him by this Agreement;
- ii. Each Party has expressly authorized its or his undersigned representative to execute this agreement on the Party's behalf as its or his duly authorized agent;
- iii. This Agreement has been thoroughly negotiated and analyzed by its or his counsel and has been executed and delivered in good faith, pursuant to arm's length negotiations, and for value and valuable consideration; and
- iv. Each Party will use its or his best efforts to seek entry of an order approving this Agreement substantially in conformity with the proposed order attached as Exhibit C to the Motion.

20. The Insured Parties represent and warrant that they have not and will not assign any interest in the Policy.

21. The Insured Parties represent and warrant that they are the owners of the Policy and that no other person or entity has legal title to the Policy.

22. The Insured Parties represent and warrant that they have not in any way assisted, and shall not in any way assist, any person or entity in the establishment of any claim against Acuity.

**V. ACTIONS INVOLVING THIRD PARTIES**

23. The Debtor hereby agrees as follows with respect to any claim, case, controversy, arbitration, lawsuit, or other proceedings of any kind involving the Debtor:

i. The Debtor will not obtain payment from any other insurer of any amount that may be attributable or allocable to Acuity under the Policy; and

ii. Without limiting the effect of the releases set forth in this Agreement, in the event that any other insurer obtains a judicial determination, settlement, or binding arbitration award that it is entitled to obtain a sum certain from Acuity as a result of a claim for contribution, subrogation, indemnification, or other similar claim against Acuity, the Debtor shall voluntarily reduce its judgment or claim against, or settlement with, such other insurer(s) to the extent necessary to eliminate such contribution, subrogation, or indemnification claims against Acuity. To ensure that such a reduction is accomplished, Acuity shall be entitled to assert this paragraph as a defense to any action for any such portion of the judgment, settlement, or binding arbitration award, and shall be entitled to have the court or appropriate tribunal issue such orders as are necessary to effectuate the reduction to protect Acuity from any liability for the judgment, settlement, or binding arbitration award or any portion thereof.

24. Acuity shall not seek reimbursement for any payment that Acuity is obligated to make under this Agreement, whether by way of a claim for contribution, subrogation, indemnification, or otherwise from any other insurer providing coverage to the Debtor or the Members, unless that other insurer first seeks contribution, subrogation, indemnification, or similar relief from Acuity.

25. The Injunction: The approval of this Agreement will establish a supplemental, permanent injunction, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, permanently enjoining the prosecution, continuation, or commencement of any interest or claim that any person or entity holds or asserts or may in the future hold or assert against Acuity arising out of or in any way related to the Policy. If any person or entity attempts to prosecute such a claim against Acuity, then, upon prompt notice from Acuity, the Debtor, or the Debtor's successor in interest, will file a motion and supporting papers to obtain an order from the Bankruptcy Court protecting Acuity from any such claims. The injunction described herein is intended grant Acuity the broadest relief possible and shall operate in conjunction with sections 10.3 and 10.4 of the Plan.

## VI. MISCELLANEOUS

26. If the Bankruptcy Court declines to approve this Agreement, or if the order approving this Agreement is subsequently vacated, modified in a way not acceptable to the Parties, or reversed on appeal, the Parties may then terminate this Agreement by delivering written notice to the other Parties. In event that this Agreement is terminated:

- i. The Agreement shall be deemed null and void;
- ii. Acuity shall not be obligated to pay the Settlement Amount pursuant to this Agreement, and any amounts paid to the Debtor shall be refunded to Acuity within ten (10) days;
- iii. Acuity and the Debtor shall have all of the rights, defenses, and obligations under the Policy or with respect to the Policy that they would have had absent this Agreement; and
- iv. Any and all otherwise applicable statutes of limitation or repose, or other time related limitations, shall be deemed to have been tolled from the date by which all Parties executed the Agreement through the date that the Agreement became null and void.

27. The Parties will take such steps and execute any documents as may be reasonably necessary or proper to effectuate the purpose and intent of this Agreement and to preserve its validity and enforceability.

28. This Agreement constitutes a single integrated written contract that expresses the entire agreement and understanding between and among the Parties.

29. This Agreement may be modified only by a written amendment signed by the Parties, and no waiver of any provision of this Agreement or of a breach thereof shall be effective unless expressed in writing signed by the waiving Parties. The waiver by any Party of any of the provisions of this Agreement or of the breach thereof shall not operate or be construed as a waiver of any other provision or breach.

30. By entering into this Agreement, none of the Parties has waived or shall be deemed to have waived any rights, obligations, or positions they have asserted or may in the future assert in connection with any matter outside the scope of this Agreement. No part of this Agreement, its negotiation, or its performance may be used in any manner in any action, suit, or proceeding as evidence of the rights, duties, or obligations of the Parties with respect to matters outside the scope of this Agreement. All actions taken and statements made by the Parties or by their representatives, relating to this Agreement or participation in this Agreement, including its development and implementation, shall be without prejudice or value as precedent and shall not be used as a standard by which other matters may be judged.

31. This Agreement represents a compromise of disputed Claims and shall not be deemed an admission or concession of liability, culpability, wrongdoing, or insurance coverage. All related discussions, negotiations, and all prior drafts of this Agreement shall be deemed to fall within the protection afforded to compromises and to offers to compromise by Rule 408 of the Federal Rules of Evidence and any parallel state law provisions. Any evidence of the negotiations or discussions associated with this Agreement shall be inadmissible in any action or proceeding for purposes of establishing any rights, duties, or obligations of the Parties, except that they shall be admissible to the extent they would have otherwise been admissible, absent this paragraph, in (i) an action or proceeding to enforce the terms of this Agreement, including any use as set forth in Section V or (ii) any possible action or proceeding between Acuity and any of its reinsurers. This Agreement shall not be used as evidence or in any other manner, in any court or dispute resolution proceeding, to create, prove, or interpret Acuity's obligations under the Policy or any other binder, certificate, or policy of insurance or any acknowledgment of coverage issued by Acuity, with respect to any claims against Acuity.

32. None of the Parties shall make any public statements or disclosures (i) regarding each other's rationale or motivation for negotiating or entering into this Agreement, or (ii) asserting or implying in any way that the Parties acted improperly or in violation of any duty or obligation, express or implied, in connection with any matter arising out of, relating to, or in connection with the Policy or any other binder, certificate, or policy of insurance issued by Acuity.

33. Section titles and/or headings contained in this Agreement are included only for ease of reference and shall have no substantive effect.

34. All notices, demands, or other communication to be provided pursuant to this Agreement shall be in writing and sent by e-mail and Federal Express or other overnight delivery service, costs prepaid, to the Parties at the addresses set forth below, or to such other person or address as any of them may designate in writing from time to time:

If to the Debtor:

Brittany Michael  
Stinson Leonard Street LLP  
50 South Sixth Street, Suite 2600  
Minneapolis, MN 55402  
Email: brittany.michael@stinson.com

If to Acuity:

Susan N.K. Gummow  
222 N. La Salle St., Suite 1400  
Chicago, IL 60601  
Email: sgummow@fgppr.com

35. This Agreement may be executed in multiple counterparts, all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by

facsimile or other electronic image, which facsimile or other electronic image counterparts shall be deemed to be originals.

36. Nothing contained in this Agreement shall be deemed or construed to constitute:

- i. An admission by Acuity that the Insured Parties, or any other person or entity was or is entitled to any insurance coverage under the Policy or any other binder, certificate, or policy of insurance issued, or allegedly issued by Acuity or as to the validity of any of the positions that have been or could have been asserted by the Insured Parties; or
- ii. An admission by the Debtor as to the validity of any of the positions or defenses to coverage that have been or could have been asserted by Acuity or any Claims that have been or could have been asserted by the Debtor against Acuity.

37. The Debtor and Acuity shall be responsible for their own fees and costs incurred in connection with the Bankruptcy Case, this Agreement, and the implementation of this Agreement.

38. The following rules of construction shall apply to this Settlement Agreement:

- i. Unless the context of this Agreement otherwise requires: (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms “hereof,” “herein,” “hereby,” and derivative or similar words refer to this entire Agreement; and (d) the words “include,” “includes,” or “including” shall be deemed to be followed by the words “without limitation.”
- ii. References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions regardless of whether specifically referenced in this Agreement.
- iii. The wording of this Agreement was reviewed by legal counsel for each of the Parties, and each of them had sufficient opportunity to propose and negotiate changes prior to its execution. The wording of this Agreement shall not be construed in favor of or against any Person.
- iv. The use of the terms “intend,” “intended,” or “intent,” when describing the intention of the Parties, as the case may be, shall not be construed to create a breach of this Agreement when the stated intent is not achieved.

39. The Bankruptcy Court shall retain jurisdiction to interpret and enforce the provisions of this Agreement, which shall be construed in accordance with the laws of South Dakota.

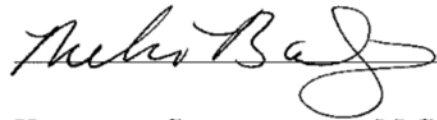
40. This Agreement and the obligations under this Agreement shall be binding on the Parties and shall survive the entry of the order confirming the Plan, or dismissal or conversion of the Bankruptcy Case. The Agreement shall be binding on any trustee appointed, whether pursuant to a plan, following conversion to Chapter 7 of the Bankruptcy Code, or otherwise.

41. This Settlement Agreement shall be effective on the date when all Parties have executed this agreement.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date indicated below.

Date: 3/19/2019

A handwritten signature in black ink, appearing to read "Melissa Bailey", written over a horizontal line.

HULTGREN CONSTRUCTION, LLC

By: Melissa Bailey

Its: Authorized Representative

Date: 03/18/19



AARON HULTGREN

Date: \_\_\_\_\_

\_\_\_\_\_

NORMAN DRAKE

Date: \_\_\_\_\_

\_\_\_\_\_

LARRY E. CANFIELD

Date: \_\_\_\_\_

\_\_\_\_\_

PAUL CINK

Date: \_\_\_\_\_

\_\_\_\_\_

AARON HULTGREN

Date: 3/19/2019

  
\_\_\_\_\_

NORMAN DRAKE

Date: \_\_\_\_\_

\_\_\_\_\_

LARRY E. CANFIELD

Date: \_\_\_\_\_

\_\_\_\_\_

PAUL CINK

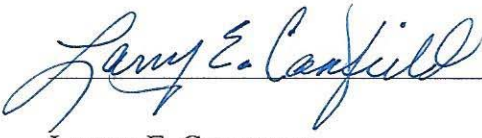
Date: \_\_\_\_\_

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AARON HULTGREN

Date: \_\_\_\_\_

\_\_\_\_\_  
NORMAN DRAKE

Date: 3-20-19

  
LARRY E. CANFIELD

Date: \_\_\_\_\_

\_\_\_\_\_  
PAUL CINK

Date: \_\_\_\_\_

\_\_\_\_\_  
AARON HULTGREN

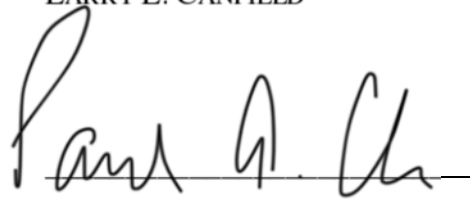
Date: \_\_\_\_\_

\_\_\_\_\_  
NORMAN DRAKE

Date: \_\_\_\_\_

\_\_\_\_\_  
LARRY E. CANFIELD

Date: 3/20/19  
\_\_\_\_\_

  
\_\_\_\_\_

PAUL CINK

Date: 3/19/2019

ACUITY, A MUTUAL INSURANCE COMPANY

By: *Nick VanRabe*

Its: Field Claims Manager

**EXHIBIT C**

**ACUITY POLICY**


**COMMERCIAL AUTO  
COVERAGE PART**
**ACUITY Edge Business Auto Amended Declarations**

Item One

First Named Insured and Address:

HULTGREN CONSTRUCTION LLC  
402 W 9TH ST  
SIOUX FALLS SD 57104

Agency Name and Number:

BOEN & ASSOCIATES, INC  
2979-AY

Policy Number: X87409

Policy Period: Effective Date: 01-20-16

Expiration Date: 01-20-17

In return for the payment of the premium and subject to  
all the terms of the policy, we agree to provide the  
insurance coverage as stated in the same.

12:01 A.M. standard time at  
your mailing address shown  
in the declarations

Item Two

**SCHEDULE OF COVERAGES AND COVERED AUTOS**

Each of these coverages apply only to those *autos* shown as covered *autos* by the entry of one or more of the symbols from the Covered Autos section of the Business Auto Coverage Form next to the name of the coverage.

Coverages	Covered Auto Symbols	Limit of Insurance				Premium
Liability	1	\$	1,000,000	each <i>accident</i>		\$ 4,572.00
Auto Medical Payments	2		5,000	each person		191.00
Uninsured Motorists Bodily Injury	7		1,000,000	each person	1,000,000 each <i>accident</i>	15.00
Underinsured Motorists	7		1,000,000	each person	1,000,000 each <i>accident</i>	110.00
Comprehensive	7	Actual cash value, cost of repair or stated amount (if any), whichever is less, minus the deductible shown in Item Three for each covered <i>auto</i> .				703.00
Collision	7	Actual cash value, cost of repair or stated amount (if any), whichever is less, minus the deductible shown in Item Three for each covered <i>auto</i> .				1,386.00
<b>Estimated Schedule Premium</b>						<b>\$ 6,977.00</b>

**PREMIUM SUMMARY**

Estimated Schedule Premium	\$ 6,977.00
Estimated Endorsement Premium	
<b>Estimated Advance Premium</b>	<b>\$ 6,977.00</b>

**COVERAGE FORMS AND ENDORSEMENTS APPLICABLE TO BUSINESS AUTO COVERAGE**

Policy Number: X87409  
Effective Date: 01-20-16

Form Number	Form Title	Premium
IL-0017F (11-98)	Common Policy Conditions .....	\$
IL-0021F (03-14)	Nuclear Energy Liability Exclusion - Broad Form .....	
IL-7012 (03-14)	Asbestos Exclusion .....	
IL-7042 (03-03)	Exclusion of Named Driver .....	
CA-0001F (10-14)	Business Auto Coverage Form .....	
CA-2384F (10-13)	Exclusion of Terrorism .....	
CA-7074 (11-12)	South Dakota Changes .....	
CA-7246 (10-14)	ACUITY Advantages - Business Auto .....	
IL-7024 (03-14)	South Dakota Changes - Cancellation and Nonrenewal .....	
CA-7073 (02-14)	South Dakota Uninsured and Underinsured Motorists Coverage .....	
CA-9903F (03-06)	Auto Medical Payments Coverage .....	
CA-7027 (12-93)	Loss Payable Clause .....	
<b>Estimated Endorsement Premium .....</b>		<b>\$</b>

## Item Three

**SCHEDULE OF COVERAGES**

Unit No.	Model Year	Vehicle Description	Vehicle ID Number	PGS Comp	PGS Coll	Terr	Class Code
001		NONOWNED AUTOS (4 Employees)				101	600001
002		HIRED AUTOS (\$ 1 estimated cost of hire, as defined below) <sup>2</sup>				101	500001
004	04	FORD F450 SUPER DUTY	1FDXX47P24EC15274	008	008	101	21481
007	14	CARRYON 8X24 CARGO TRAILER	4YMCL249EM006839	006	006	101	68481
009	06	CHEVROLET SILVERADO K2500HD	1GCHK23D76F138518	008	008	101	01481
010	15	FORD F150 SUPER CAB	1FTEX1EP6FKE75615	008	008	101	01481
011	99	GMC C-SERIES C7H042	1GDP7H1C6XJ505624	008	008	101	31481
012	13	SURE TRAC UTILITY TRAILER	5JW1U1211D1070928	006	006	101	68481
013	16	BIG TEX 92X20	UNKNOWN	008	008	101	67481
014	16	BIG TEX 83X20	16VDX2021G2062116	008	008	101	67481
015	04	FORD F450 SUPER DUTY	1FDXF47P44ED25584	009	009	101	21481

Unit No.	Liability Limit	Liability BI Premium	Liability PD Premium	PD Deductible	Medical Payments Limit	Medical Payments Premium
001	1,000,000	149.00	Included			
002	1,000,000	23.00	Included			
004	1,000,000	732.00	Included		5,000	35.00
007	1,000,000	72.00	Included		5,000	4.00
009	1,000,000	694.00	Included		5,000	35.00
010	1,000,000	1,065.00	Included		5,000	35.00
011	1,000,000	889.00	Included		5,000	35.00

Policy Number: X87409  
Effective Date: 01-20-16

Unit No.	Liability Limit	Liability BI Premium	Liability PD Premium	PD Deductible	Medical Payments Limit	Medical Payments Premium
012	1,000,000	72.00	Included		5,000	4.00
013	1,000,000	72.00	Included		5,000	4.00
014	1,000,000	72.00	Included		5,000	4.00
015	1,000,000	732.00	Included		5,000	35.00

Unit No.	Uninsured Motorists Limit <sup>3</sup>	Uninsured Motorists Premium	UMPD Deductible	Underinsured Motorists Limit <sup>3</sup>	Underinsured Motorists Premium
001					
002					
004	1,000/1,000/0	3.00		1,000/1,000	22.00
007					
009	1,000/1,000/0	3.00		1,000/1,000	22.00
010	1,000/1,000/0	3.00		1,000/1,000	22.00
011	1,000/1,000/0	3.00		1,000/1,000	22.00
012					
013					
014					
015	1,000/1,000/0	3.00		1,000/1,000	22.00

Unit No.	Stated Amount	Comprehensive Deductible Amount	Comprehensive Premium Amount	Specified Causes of Loss Stated Amount	Specified Causes of Loss Deductible Amount	Specified Causes of Loss Premium Amount	Full Glass
001							
002							
004		500	88.00				
007		500	99.00				
009		500	155.00				
010		500	256.00				
011							
012							
013							
014							
015		500	105.00				

Unit No.	Stated Amount	Collision Deductible Amount	Collision Premium Amount	Towing Limit	Towing Premium	APC Discount	Safety Discount
001							
002							
004		500	153.00				

Policy Number:

X87409

Effective Date:

01-20-16

Unit No.	Stated Amount	Collision Deductible Amount	Premium Amount	Towing Limit	Towing Premium	APC Discount	Safety Discount
007		500	204.00				
009		500	260.00				
010		500	554.00				
011							
012							
013							
014							
015		500	215.00				

Unit No.	Fleet No.	Premium Per Unit Number
001		149.00
002		23.00
004		1,033.00
007		379.00
009		1,169.00
010		1,935.00
011		949.00
012		76.00
013		76.00
014		76.00
015		1,112.00

**Estimated Schedule Premium ..... \$ 6,977.00**

<sup>2</sup> Cost of hire means the total amount you incur for the hire of *autos* you do not own (not including *autos* you borrow or rent from your partners or *employees* or their family members). Cost of hire does not include charges for services performed by motor carriers of property or passengers.

<sup>3</sup> First number is thousands of bodily injury coverage each person; second number is thousands of bodily injury coverage each *accident*; third number (if any) is thousands of property damage coverage each *accident*.

#### **ADDITIONAL NAMED INSURED**

WHO IS AN INSURED includes the following Additional Named Insureds:

NONE

#### **FIRST NAMED INSURED IS:**

LTD LIAB COMPANY (LLC)

**BUSINESS AUTO COVERAGE FORM****Index of Policy Provisions**

	Page		Page
<b>SECTION I - COVERED AUTOS</b> .....	1	<b>SECTION III - PHYSICAL DAMAGE</b>	
Description of Covered Auto Designation		<b>COVERAGE</b> .....	5
Symbols .....	1	Coverage .....	5
Owned Autos You Acquire After the Policy		Exclusions .....	6
Begins .....	1	Limit of Insurance .....	6
Certain Trailers, Mobile Equipment and		Deductible .....	7
Temporary Substitute Autos .....	2		
		<b>SECTION IV - BUSINESS AUTO</b>	
<b>SECTION II - LIABILITY COVERAGE</b> .....	2	<b>CONDITIONS</b> .....	7
Coverage .....	2	Loss Conditions .....	7
Exclusions .....	3	General Conditions .....	8
Limit of Insurance .....	5	<b>SECTION V - DEFINITIONS</b> .....	9

**BUSINESS AUTO COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declara-

tions. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in italics have special meaning. Refer to Section V - Definitions.

**SECTION I - COVERED AUTOS**

Item Two of the Declarations shows the *autos* that are covered *autos* for each of your coverages. The following numerical symbols describe the *autos* that may be covered *autos*. The symbols entered next to a coverage on the Declarations designate the only *autos* that are covered *autos*.

**A. DESCRIPTION OF COVERED AUTO DESIGNATION SYMBOLS**

## SYMBOL DESCRIPTION

- 1 =** ANY *AUTO*.
- 2 =** OWNED *AUTOS* ONLY. Only those *autos* you own (and for Liability Coverage any *trailers* you do not own while attached to power units you own). This includes those *autos* you acquire ownership of after the policy begins.
- 3 =** OWNED PRIVATE PASSENGER *AUTOS* ONLY. Only the private passenger *autos* you own. This includes those private passenger *autos* you acquire ownership of after the policy begins.
- 4 =** OWNED *AUTOS* OTHER THAN PRIVATE PASSENGER *AUTOS* ONLY. Only those *autos* you own that are not of the private passenger type (and for Liability Coverage any *trailers* you do not own while attached to power units you own). This includes those *autos* not of the private passenger type you acquire ownership of after the policy begins.
- 5 =** OWNED *AUTOS* SUBJECT TO NO-FAULT. Only those *autos* you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those *autos* you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
- 6 =** OWNED *AUTOS* SUBJECT TO A COMPULSORY UNINSURED MOTORISTS LAW. Only those *autos* you own that because of the law in the state where they are licensed or principally garaged, are required to have and can-

not reject Uninsured Motorists Coverage. This includes those *autos* you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.

- 7 =** SPECIFICALLY DESCRIBED *AUTOS*. Only those *autos* described in Item Three of the Declarations for which a premium charge is shown (and for Liability Coverage any *trailers* you do not own while attached to any power unit described in Item Three).
- 8 =** HIRED *AUTOS* ONLY. Only those *autos* you lease, hire, rent or borrow. This does not include any *auto* you lease, hire, rent or borrow from any of your *employees* or partners or members of their households.
- 9 =** NONOWNED *AUTOS* ONLY. Only those *autos* you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes *autos* owned by your *employees*, partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.
- 19 =** MOBILE EQUIPMENT SUBJECT TO COMPULSORY OR FINANCIAL RESPONSIBILITY OR OTHER MOTOR VEHICLE INSURANCE LAW ONLY. Only those *autos* that are land vehicles and that would qualify under the definition of *mobile equipment* under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.

**B. OWNED AUTOS YOU ACQUIRE AFTER THE POLICY BEGINS**

- 1.** If symbols 1, 2, 3, 4, 5, 6 or 19 are entered next to a coverage in Item Two of the Declarations, then you have coverage for *autos* that you acquire of the type described for the remainder of the policy period.
- 2.** But, if symbol 7 is entered next to a cov-

erage in Item Two of the Declarations, an *auto* you acquire will be a covered *auto* for that coverage only if:

- a. We already cover all *autos* that you own for that coverage or it replaces an *auto* you previously owned that had that coverage; and
- b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

### C. CERTAIN TRAILERS, MOBILE EQUIPMENT AND TEMPORARY SUBSTITUTE AUTOS

If Liability Coverage is provided by this coverage form, the following types of vehicles are also covered *autos* for Liability Coverage:

1. *Trailers* with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. *Mobile equipment* while being carried or towed by a covered *auto*.
3. Any *auto* you do not own while used with the permission of its owner as a temporary substitute for a covered *auto* you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. Loss; or
  - e. Destruction.

## SECTION II - LIABILITY COVERAGE

### A. COVERAGE

We will pay all sums an *insured* legally must pay as damages because of *bodily injury* or *property damage* to which this insurance applies, caused by an *accident* and resulting from the ownership, maintenance or use of a covered *auto*.

We will also pay all sums an *insured* legally must pay as a *covered pollution cost or expense* to which this insurance applies, caused by an *accident* and resulting from the ownership, maintenance or use of covered *autos*. However, we will only pay for the *covered pollution cost or expense* if there is either *bodily injury* or *property damage* to which this insurance applies that is caused by the same *accident*.

We have the right and duty to defend any *insured* against a *suit* asking for such damages or a *covered pollution cost or expense*. However, we have no duty to defend any *insured* against a *suit* seeking damages for *bodily injury* or *property damage* or a *covered pollution cost or expense* to which this insurance does not apply. We may investigate and settle any claim or *suit* as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

#### 1. Who Is an Insured

The following are *insureds*:

- a. You for any covered *auto*.
- b. Anyone else while using with your permission a covered *auto* you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered *auto*. This exception does not apply if the covered *auto* is a *trailer* connected to a covered *auto* you own.

- (2) Your *employee* if the covered *auto* is owned by that *employee* or a member of his or her household.
- (3) Someone using a covered *auto* while he or she is working in a business of selling, servicing, repairing, parking or storing *autos* unless that business is yours.
- (4) Anyone other than your *employees*, partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their *employees*, while moving property to or from a covered *auto*.
- (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered *auto* owned by him or her or a member of his or her household.
- c. Anyone liable for the conduct of an *insured* described above but only to the extent of that liability.

### 2. Coverage Extensions

#### a. Supplementary Payments

We will pay for the *insured*:

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an *accident* we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any *suit* against the *insured* we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the *insured* at our request, in-

cluding actual loss of earnings up to \$250 a day because of time off from work.

- (5) All court costs taxed against the *insured* in any *suit* against the *insured* we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the *insured*.
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any *suit* against the *insured* we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

#### **b. Out of State Coverage Extensions**

While a covered *auto* is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limit or limits specified by a compulsory or financial responsibility law in the jurisdiction where the covered *auto* is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out of state vehicles by the jurisdiction where the covered *auto* is being used.

We will not pay anyone more than once for the same elements of *loss* because of these extensions.

### **B. EXCLUSIONS**

This insurance does not apply to any of the following:

#### **1. Expected or Intended Injury**

*Bodily injury* or *property damage* expected or intended from the standpoint of the *insured*.

#### **2. Contractual**

Liability assumed under any contract or agreement. But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an *insured contract* provided the *bodily injury* or *property damage* occurs subsequent to the execution of the contract or agreement; or
- b. That the *insured* would have in the absence of the contract or agreement.

### **3. Workers' Compensation**

Any obligation for which the *insured* or the *insured's* insurer may be held liable under any workers' compensation law, disability benefits law or unemployment compensation law or any similar law.

### **4. Employee Indemnification and Employer's Liability**

*Bodily injury* to:

- a. An *employee* of the *insured* arising out of and in the course of:
  - (1) Employment by the *insured*; or
  - (2) Performing duties related to the conduct of the *insured's* business; or
- b. The spouse, child, parent, brother or sister of that *employee* as a consequence of paragraph a above.

This exclusion applies:

- a. Whether the *insured* may be liable as an employer or in any other capacity; and
- b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to *bodily injury* to domestic *employees* not entitled to workers' compensation benefits or to liability assumed by the *insured* under an *insured contract*. For the purposes of the coverage form, a domestic *employee* is a person engaged in household or domestic work performed principally in connection with a residence premises.

### **5. Fellow Employee**

*Bodily injury* to:

- a. Any fellow *employee* of the *insured* arising out of and in the course of the fellow *employee's* employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow *employee* as a consequence of paragraph a above.

### **6. Care, Custody or Control**

*Property damage* to or covered *pollution cost* or *expense* involving property owned or transported by the *insured* or in the *insured's* care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

### **7. Handling of Property**

*Bodily injury* or *property damage* resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the *insured* for movement into or onto the covered *auto*; or

- b. After it is moved from the covered *auto* to the place where it is finally delivered by the *insured*.

#### 8. Movement of Property by Mechanical Device

*Bodily injury or property damage* resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered *auto*.

#### 9. Operations

*Bodily injury or property damage* arising out of the operation of:

- a. Any equipment listed in paragraphs 6b and 6c of the definition of *mobile equipment*; or
- b. Machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of *mobile equipment* if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

#### 10. Completed Operations

*Bodily injury or property damage* arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in paragraphs a or b above.

Your work will be deemed completed at the earliest of the following times:

- a. When all of the work called for in your contract has been completed.
- b. When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- c. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

#### 11. Pollution

*Bodily injury or property damage* arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants*:

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered *auto*;
  - (2) Otherwise in the course of transit by or on behalf of the *insured*; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered *auto*.
- b. Before the *pollutants* or any property in which the *pollutants* are contained are moved from the place where they are accepted by the *insured* for movement into or onto the covered *auto*; or
- c. After the *pollutants* or any property in which the *pollutants* are contained are moved from the covered *auto* to the place where they are finally delivered, disposed of or abandoned by the *insured*.

Paragraph a above does not apply to fuels, lubricants, fluids, exhaust gases or other similar *pollutants* that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered *auto* or its parts, if:

- (1) The *pollutants* escape, seep, migrate, or are discharged, dispersed or released directly from an *auto* part designed by its manufacturer to hold, store, receive or dispose of such *pollutants*; and
- (2) The *bodily injury, property damage or covered pollution cost or expense* does not arise out of the operation of any equipment listed in paragraphs 6b and 6c of the definition of *mobile equipment*.

Paragraphs b and c above of this exclusion do not apply to *accidents* that occur away from premises owned by or rented to an *insured* with respect to *pollutants* not in or upon a covered *auto* if:

- (1) The *pollutants* or any property in which the *pollutants* are contained are upset, overturned or damaged as a result of the maintenance or use of a covered *auto*; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the *pollutants* is caused directly by such upset, overturn or damage.

**12. War**

*Bodily injury or property damage* arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

**13. Racing**

Covered *autos* while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered *auto* is being prepared for such a contest or activity.

**C. LIMIT OF INSURANCE**

Regardless of the number of covered *autos*, *insureds*, premiums paid, claims made or vehicles involved in the *accident*, the most we will pay for the total of all damages and *covered pollution cost or expense* combined, resulting from any one *accident* is the Limit of Insurance for Liability Coverage shown in the Declarations.

All *bodily injury, property damage* and *covered pollution cost or expense* resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one *accident*.

No one will be entitled to receive duplicate payments for the same elements of *loss* under this coverage form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

**SECTION III - PHYSICAL DAMAGE COVERAGE****A. COVERAGE**

1. We will pay for *loss* to a covered *auto* or its equipment under:

- a. **Comprehensive Coverage**

From any cause except:

- (1) The covered *auto's* collision with another object; or
- (2) The covered *auto's* overturn.

- b. **Specified Causes of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered *auto*.

- c. **Collision Coverage**

Caused by:

- (1) The covered *auto's* collision with another object; or
- (2) The covered *auto's* overturn.

**2. Towing**

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered *auto* of the private passenger type is disabled. However, the labor must be performed at the

place of disablement.

3. **Glass Breakage - Hitting a Bird or Animal - Falling Objects or Missiles**

If you carry Comprehensive Coverage for the damaged covered *auto*, we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. Loss caused by hitting a bird or animal; and
- c. Loss caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered *auto's* collision or overturn considered a *loss* under Collision Coverage.

4. **Coverage Extensions**

- a. **Transportation Expenses**

We will also pay up to \$20 per day to a maximum of \$600 for temporary transportation expense incurred by you because of the total theft of a covered *auto* of the private passenger type. We will pay only for those covered *autos* for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered *auto* is returned to use or we pay for its *loss*.

**b. Loss of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an *insured* becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered *auto*;
- (2) Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered *auto*; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered *auto*.

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

**B. EXCLUSIONS**

1. We will not pay for *loss* caused by or resulting from any of the following. Such *loss* is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the *loss*.

**a. Nuclear Hazard**

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

**b. War or Military Action**

- (1) War, including undeclared or civil war;
  - (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.
2. We will not pay for *loss* to any covered *auto* while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for *loss* to any covered *auto* while that covered *auto* is being prepared for such a contest or activity.
  3. We will not pay for *loss* due and confined to:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such *loss* resulting from the total theft of a covered *auto*.

4. We will not pay for *loss* to any of the following:

- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
- b. Any device designed or used to detect speed-measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed-measurement equipment.
- c. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.
- d. Any accessories used with the electronic equipment described in paragraph c above.

5. Exclusions 4c and 4d do not apply to equipment designed to be operated solely by use of the power from the *auto*'s electrical system that, at the time of *loss*, is:

- a. Permanently installed in or upon the covered *auto*;
- b. Removable from a housing unit which is permanently installed in or upon the covered *auto*;
- c. An integral part of the same unit housing any electronic equipment described in paragraphs a and b above; or
- d. Necessary for the normal operation of the covered *auto* or the monitoring of the covered *auto*'s operating system.

6. We will not pay for *loss* to a covered *auto* due to *diminution of value*.

**C. LIMIT OF INSURANCE**

1. The most we will pay for *loss* in any one *accident* is the lesser of:
  - a. The actual cash value of the damaged or stolen property as of the time of the *loss*; or
  - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
2. \$1,000 is the most we will pay for *loss* in any one *accident* to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of *loss*, is:

- a. Permanently installed in or upon the covered *auto* in a housing, opening or other location that is not normally used by the *auto* manufacturer for the installation of such equipment;
  - b. Removable from a permanently installed housing unit as described in paragraph 2a above or is an integral part of that equipment; or
  - c. An integral part of such equipment.
3. An adjustment for depreciation and physical condition will be made in determining actual

cash value in the event of a total *loss*.

4. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

#### D. DEDUCTIBLE

For each covered *auto*, our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to *loss* caused by fire or lightning.

### SECTION IV - BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

#### A. LOSS CONDITIONS

##### 1. Appraisal for Physical Damage Loss

If you and we disagree on the amount of *loss*, either may demand an appraisal of the *loss*. In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of *loss*. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

##### 2. Duties in the Event of Accident, Claim, Suit or Loss

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of *accident*, claim, *suit* or *loss*, you must give us or our authorized representative prompt notice of the *accident* or *loss*. Include:
  - (1) How, when and where the *accident* or *loss* occurred;
  - (2) The *insured's* name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved *insured* must:
  - (1) Assume no obligation, make no payment or incur no expense without our consent, except at the *insured's* own cost.

- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or *suit*.

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the *suit*.

- (4) Authorize us to obtain medical records or other pertinent information.

- (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

- c. If there is *loss* to a covered *auto* or its equipment you must also do the following:

- (1) Promptly notify the police if the covered *auto* or any of its equipment is stolen.

- (2) Take all reasonable steps to protect the covered *auto* from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.

- (3) Permit us to inspect the covered *auto* and records proving the *loss* before its repair or disposition.

- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

##### 3. Legal Action Against Us

No one may bring a legal action against us under this coverage form until:

- a. There has been full compliance with all the terms of this coverage form; and
- b. Under Liability coverage, we agree in writing that the *insured* has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the *insured's* liability.

**4. Loss Payment - Physical Damage Coverages**

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property at our expense. We will pay for any damage that results to the *auto* from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the *loss*, our payment will include the applicable sales tax for the damaged or stolen property.

**5. Transfer of Rights of Recovery Against Others to Us**

If any person or organization to or for whom we make payment under this coverage form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after *accident* or *loss* to impair them.

**B. GENERAL CONDITIONS****1. Bankruptcy**

Bankruptcy or insolvency of the *insured* or the *insured's* estate will not relieve us of any obligations under this coverage form.

**2. Concealment, Misrepresentation or Fraud**

This coverage form is void in any case of fraud by you at any time as it relates to this coverage form. It is also void if you or any other *insured*, at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This coverage form;
- b. The covered *auto*;
- c. Your interest in the covered *auto*; or
- d. A claim under this coverage form.

**3. Liberalization**

If we revise this coverage form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

**4. No Benefit to Bailee - Physical Damage Coverages**

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this coverage form.

**5. Other Insurance**

- a. For any covered *auto* you own, this coverage form provides primary insur-

ance. For any covered *auto* you do not own, the insurance provided by this coverage form is excess over any other collectible insurance. However, while a covered *auto* which is a *trailer* is connected to another vehicle, the Liability Coverage this coverage form provides for the *trailer* is:

- (1) Excess while it is connected to a motor vehicle you do not own.
- (2) Primary while it is connected to a covered *auto* you own.

- b. For Hired Auto Physical Damage Coverage, any covered *auto* you lease, hire, rent or borrow is deemed to be a covered *auto* you own. However, any *auto* that is leased, hired, rented or borrowed with a driver is not a covered *auto*.

- c. Regardless of the provisions of paragraph a above, this coverage form's Liability Coverage is primary for any liability assumed under an *insured contract*.

- d. When this coverage form and any other coverage form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our coverage form bears to the total of the limits of all the coverage forms and policies covering on the same basis.

**6. Premium Audit**

- a. The estimated premium for this coverage form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the First Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the First Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this coverage form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

**7. Policy Period, Coverage Territory**

- a. Under this coverage form, we cover *accidents* and *losses* occurring:
  - (1) During the policy period shown in the Declarations; and

- (2) Within the coverage territory.
- b. The coverage territory is:
- (1) The United States of America;
  - (2) The territories and possessions of the United States of America;
  - (3) Puerto Rico;
  - (4) Canada; and
  - (5) Anywhere in the world if:
    - (a) A covered *auto* of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and
    - (b) The *insured's* responsibility to pay damages is determined in a *suit* on the merits, in the United States of America, the territories and possessions of the United States of America,

Puerto Rico, or Canada or in a settlement we agree to.

- c. We also cover *loss* to, or *accidents* involving, a covered *auto* while being transported between any of these places.

## 8. Two or More Coverage Forms or Policies Issued by Us

If this coverage form and any other coverage form or policy issued to you by us or any company affiliated with us applies to the same *accident*, the aggregate maximum Limit of Insurance under all the coverage forms or policies shall not exceed the highest applicable Limit of Insurance under any one coverage form or policy. This condition does not apply to any coverage form or policy issued by us or an affiliated company specifically to apply as excess insurance over this coverage form.

## SECTION V - DEFINITIONS

- A. "*Accident*" includes continuous or repeated exposure to the same conditions resulting in *bodily injury* or *property damage*.
- B. "*Auto*" means:
1. A land motor vehicle, *trailer* or semitrailer designed for travel on public roads; or
  2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.
- However, *auto* does not include *mobile equipment*.
- C. "*Bodily injury*" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.
- D. "*Covered pollution cost or expense*" means any cost or expense arising out of:
1. Any request, demand, order or statutory or regulatory requirement that any *insured* or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of *pollutants*; or
  2. Any claim or *suit* by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of *pollutants*.

*Covered pollution cost or expense* does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants*:

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered *auto*;
  - (2) Otherwise in the course of transit by or on behalf of the *insured*; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered *auto*;
- b. Before the *pollutants* or any property in which the *pollutants* are contained are moved from the place where they are accepted by the *insured* for movement into or onto the covered *auto*; or
- c. After the *pollutants* or any property in which the *pollutants* are contained are moved from the covered *auto* to the place where they finally are delivered, disposed of or abandoned by the *insured*.

Paragraph a above does not apply to fuels, lubricants, fluids, exhaust gases or other similar *pollutants* that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered *auto* or its parts, if:

- (1) The *pollutants* escape, seep, migrate, or are discharged, dispersed or released directly from an *auto* part designed by its manufacturer to hold, store, receive or dispose of such *pollutants*; and
- (2) The *bodily injury*, *property damage*

or covered pollution cost or expense does not arise out of the operation of any equipment listed in paragraphs 6b or 6c of the definition of *mobile equipment*.

Paragraphs b and c above do not apply to *accidents* that occur away from premises owned by or rented to an *insured* with respect to *pollutants* not in or upon a covered *auto* if:

- (1) The *pollutants* or any property in which the *pollutants* are contained are upset, overturned or damaged as a result of the maintenance or use of a covered *auto*; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the *pollutants* is caused directly by such upset, overturn or damage.

- E. "*Diminution in value*" means the actual or perceived loss in market value or resale value which results from a direct or accidental *loss*.
- F. "*Employee*" includes a *leased worker*. *Employee* does not include a *temporary worker*.
- G. "*Insured*" means any person or organization qualifying as an *insured* in the Who Is an Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each *insured* who is seeking coverage or against whom a claim or *suit* is brought.
- H. "*Insured contract*" means:
1. A lease of premises;
  2. A sidetrack agreement;
  3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for *bodily injury* or *property damage* to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
  6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your *employees*, of any *auto*. However, such contract or agreement shall not be considered an *insured contract* to the extent that it obligates you or any of your *employees* to pay for *property damage* to any *auto*

rented or leased by you or any of your *employees*.

An *insured contract* does not include that part of any contract or agreement:

1. That indemnifies a railroad for *bodily injury* or *property damage* arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
  2. That pertains to the loan, lease or rental of an *auto* to you or any of your *employees*, if the *auto* is loaned, leased or rented with a driver; or
  3. That holds a person or organization engaged in the business of transporting property by *auto* for hire harmless for your use of a covered *auto* over a route or territory that person or organization is authorized to serve by public authority.
- I. "*Leased worker*" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. *Leased worker* does not include a *temporary worker*.
- J. "*Loss*" means direct and accidental loss or damage.
- K. "*Mobile equipment*" means any of the following types of land vehicles, including any attached machinery or equipment:
1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  2. Vehicles maintained for use solely on or next to premises you own or rent;
  3. Vehicles that travel on crawler-treads;
  4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - a. Power cranes, shovels, loaders, diggers or drills; or
    - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
  5. Vehicles not described in paragraph 1, 2, 3 or 4 above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
    - b. Cherry pickers and similar devices used to raise or lower workers; or

6. Vehicles not described in paragraph 1, 2, 3 or 4 above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not *mobile equipment* but will be considered *autos*:

- a. Equipment designed primarily for:
  - (1) Snow removal;
  - (2) Road maintenance, but not construction or resurfacing; or
  - (3) Street cleaning.
- b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.

However, *mobile equipment* does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered *autos*.

- L. "*Pollutants*" means any solid, liquid, gaseous or

thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- M. "*Property damage*" means damage to or loss of use of tangible property.

- N. "*Suit*" means a civil proceeding in which:

- 1. Damages because of *bodily injury* or *property damage*; or
  - 2. A *covered pollution cost or expense*;
- to which this insurance applies are alleged.

Suit includes:

- 1. An arbitration proceeding in which such damages or *covered pollution costs or expenses* are claimed and to which the *insured* must submit or does submit with our consent; or
- 2. Any other alternative dispute resolution proceeding in which such damages or *covered pollution costs or expenses* are claimed and to which the *insured* submits with our consent.

- O. "*Temporary worker*" means a person who is furnished to you to substitute for a permanent *employee* on leave or to meet seasonal or short-term workload conditions.

- P. "*Trailer*" includes semitrailer.

**SOUTH DAKOTA UNINSURED AND UNDERINSURED MOTORISTS COVERAGE**

CA-7073(2-14)

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

GARAGE COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

For a covered *auto* licensed or principally garaged in, or *garage operations* conducted in, South Dakota:

**1. COVERAGE****a. Uninsured Motorists Coverage**

We will pay all sums the *insured* is legally entitled to recover as compensatory damages from the owner or driver of an *uninsured motor vehicle*. The damages must result from *bodily injury* sustained by the *insured* caused by an *accident*. The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the *uninsured motor vehicle*.

No judgment for damages arising out of a *suit* brought against the owner or driver of an *uninsured motor vehicle* is binding on us unless we:

- (1) Received reasonable notice of the pendency of the *suit* resulting in the judgment; and
- (2) Had a reasonable opportunity to protect our interests in the *suit*.

**b. Uninsured Motorists Property Damage Coverage**

We will pay all sums in excess of any deductible shown in the Declarations that the *insured* is legally entitled to recover from the owner or operator of an *uninsured motor vehicle*. The damages must result from *property damage* to an *auto* specifically described in Item Three of the Declarations for which a limit is shown for Uninsured Motorists Property Damage Coverage. The owner's or driver's liability for these damages must result from the ownership, maintenance or use of the *uninsured motor vehicle*.

Any judgment for damages arising out of a *suit* brought without our written consent is not binding on us.

**c. Underinsured Motorists Coverage**

We will pay all sums the *insured* is legally entitled to recover as compensatory damages from the owner or driver of an *underinsured motor vehicle*. The damages must result from *bodily injury* sustained by the *insured* caused by an *accident*. The

owner's or driver's liability for these damages must result from the ownership, maintenance or use of the *underinsured motor vehicle*.

We will pay only after all liability bonds or policies have been exhausted by payment of judgments or settlements.

No judgment for damages arising out of a *suit* brought against the owner or driver of an *underinsured motor vehicle* is binding on us unless we:

- (1) Received reasonable notice of the pendency of the *suit* resulting in the judgment; and
- (2) Had a reasonable opportunity to protect our interests in the *suit*.

**2. WHO IS AN INSURED**

If the Named Insured is designated in the Declarations as:

**a. An individual, then the following are insureds:**

- (1) The Named Insured and any *family members*.
- (2) Anyone else *occupying* a covered *auto* or a temporary substitute for a covered *auto*. The covered *auto* must be out of service because of its breakdown, repair, servicing, *loss* or destruction.
- (3) Anyone for damages he or she is entitled to recover because of *bodily injury* sustained by another *insured*.

**b. A partnership, limited liability company, corporation or any other form of organization, then the following are insureds:**

- (1) Anyone *occupying* a covered *auto* or a temporary substitute for a covered *auto*. The covered *auto* must be out of service because of its breakdown, repair, servicing, *loss* or destruction.
- (2) Anyone for damages he or she is entitled to recover because of *bodily injury* sustained by another *insured*.

**3. EXCLUSIONS**

This insurance does not apply to any of the following:

- a.** The direct or indirect benefit of any insurer or self-insurer under any workers' compensation law, disability benefits law or similar law.
- b.** *Bodily injury* sustained by:
  - (1) An individual Named Insured while *occupying* any vehicle owned by that

Named Insured that is not a covered *auto* for Underinsured Motorists Coverage under this Coverage Form;

- (2) Any *family member* while occupying any vehicle owned by that *family member* that is not a covered *auto* for Underinsured Motorists Coverage under this Coverage Form; or
- (3) Any *family member* while occupying any vehicle owned by the Named Insured that is insured for Underinsured Motorists Coverage on a primary basis under any other Coverage Form or policy.
- c. Anyone using a vehicle without a reasonable belief that the person is entitled to do so.
- d. Punitive or exemplary damages.
- e. *Property damage* for which the *insured* has been or is entitled to be compensated by other property or physical damage insurance.
- f. The direct or indirect benefit of any insurer of property.
- g. *Property damage* caused by a vehicle for which the owner and/or operator cannot be identified.
- h. *Bodily injury* or *property damage* arising directly or indirectly out of:
  - (1) War, including undeclared or civil war;
  - (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### 4. LIMIT OF INSURANCE

##### a. Uninsured Motorists Coverage

The Uninsured Motorists Coverage Limit of Insurance shown in the Declarations applies regardless of the number of covered *autos*, *insureds*, premiums paid, claims made or vehicles involved in the *accident*.

- (1) The "each person" Limit of Insurance is the most we will pay for all damages resulting from *bodily injury* to any one person caused by any one *accident*, including all damages claimed by any person or organization for care, loss of services or death resulting from the *bodily injury*.
- (2) Subject to the "each person" Limit of Insurance, the "each accident" Limit of

Insurance is the most we will pay for all damages resulting from *bodily injury* caused by any one *accident*.

##### b. Uninsured Motorists Property Damage Coverage

The Uninsured Motorists Property Damage Coverage Limit of Insurance shown in the Declarations applies regardless of the number of covered *autos*, *insureds*, premiums paid, claims made or vehicles involved in the *accident*.

The "each accident" Limit of Insurance is the most we will pay for all damages resulting from *property damage* caused by any one *accident*.

The amount of damages will be reduced by any deductible applying to Uninsured Motorists Property Damage Coverage.

##### c. Underinsured Motorists Coverage

The Underinsured Motorists Coverage Limit of Insurance shown in the Declarations applies regardless of the number of covered *autos*, *insureds*, premiums paid, claims made or vehicles involved in the *accident*.

- (1) The "each person" Limit of Insurance is the most we will pay for all damages resulting from *bodily injury* to any one person caused by any one *accident*, including all damages claimed by any person or organization for care, loss of services or death resulting from the *bodily injury*.
- (2) Subject to the "each person" Limit of Insurance, the "each accident" Limit of Insurance is the most we will pay for all damages resulting from *bodily injury* caused by any one *accident*.
- d. No one will be entitled to receive duplicate payments for the same elements of *loss*.  
We will not make a duplicate payment under this Coverage for any element of *loss* for which payment has been made by or for anyone who is legally responsible, including all sums paid under this Coverage Form's Liability Coverage.  
We will not pay for any element of *loss* if a person is entitled to receive payment for the same element of *loss* under any workers' compensation, disability benefits or similar law.
- e. With respect to damages resulting from an *accident* with an *underinsured motor vehicle*, the limit of liability shall be reduced by all sums paid by or for anyone who is legally responsible, including all sums paid under this Coverage Form's Liability Coverage.
- f. Any amount paid under this coverage will

reduce any amount an *insured* may be paid under this Coverage Form's Liability Coverage.

## 5. CHANGES IN CONDITIONS

The Conditions are changed for Uninsured Motorists Coverage and Underinsured Motorists Coverage as follows:

- a. Other Insurance in the Business Auto and Garage Coverage Forms and Other Insurance - Primary and Excess Insurance Provisions in the Truckers Endorsement and Motor Carrier Coverage Form is replaced by the following:

If there is other applicable insurance available under one or more policies or provisions of coverage:

- (1) Any insurance we provide with respect to a vehicle the Named Insured does not own shall be excess over any other collectible uninsured or underinsured motorists insurance providing coverage on a primary basis.
- (2) If the coverage under this Coverage Form is provided:
  - (a) On a primary basis, we will pay only our share of the loss that must be paid under insurance providing coverage on a primary basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage on a primary basis.
  - (b) On an excess basis, we will pay only our share of the loss that must be paid under insurance providing coverage on an excess basis. Our share is the proportion that our limit of liability bears to the total of all applicable limits of liability for coverage on an excess basis.
- b. Duties in the Event of Accident, Claim, Suit or Loss is changed by adding the following:
  - (1) Promptly notify the police if a hit-and-run driver is involved; and
  - (2) Promptly send us copies of the legal papers if a *suit* is brought.
- c. Transfer of Rights of Recovery Against Others to Us is changed by adding the following:
 

If we make any payment and the *insured* recovers from another party, the *insured* shall hold the proceeds in trust for us and pay us back the amount we have paid.
- d. The following Condition is added:
 

**Arbitration**

If we and an *insured* disagree whether the *insured* is legally entitled to recover dam-

ages from the owner or driver of an *uninsured motor vehicle* or *underinsured motor vehicle* or do not agree as to the amount of damages that are recoverable by that *insured*, both we and that *insured* may agree to arbitration. However, disputes concerning coverage under this endorsement may not be arbitrated. If both parties agree to arbitrate, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will pay the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county in which the *insured* lives. Local rules of law as to arbitration procedures and evidence will apply. Results of an arbitration proceeding are not binding.

## 6. ADDITIONAL DEFINITIONS

As used in this endorsement:

- a. "*Family member*" means a person related to an individual Named Insured by blood, marriage or adoption who is a resident of such Named Insured's household, including a ward or foster child.
- b. "*Occupying*" means in, upon or getting in, on, out or off.
- c. "*Uninsured motor vehicle*" means a land motor vehicle or *trailer*:
  - (1) For which no liability bond or policy at the time of an *accident* provides at least the amounts required by the applicable law where a covered *auto* is principally garaged;
  - (2) For which an insuring or bonding company denies coverage or is or becomes insolvent; or
  - (3) Which is a hit-and-run vehicle and neither the driver nor owner can be identified or which causes an *accident* without hitting an *insured*, a covered *auto* or a vehicle an *insured* is *occupying*.

However, *uninsured motor vehicle* does not include any vehicle:

- (1) Owned or operated by a self-insurer under any applicable motor vehicle law, except a self-insurer who is or becomes insolvent and cannot provide the amounts required by that motor vehicle law;
- (2) Owned by a governmental unit or agency; or
- (3) Designed for use mainly off public roads while not on public roads.

- d. "*Underinsured motor vehicle*" means a land motor vehicle or *trailer* to which a liability bond or policy applies at the time of an *accident*, but the amount paid for *bodily injury* to an *insured* under that bond or policy is not enough to pay the full amount the *insured* is legally entitled to recover as damages.

However, *underinsured motor vehicle* does not include any vehicle:

- (1) Which is an *uninsured motor vehicle*;

- (2) Owned or operated by a self-insurer under any applicable motor vehicle law;
- (3) Owned by a governmental unit or agency;
- (4) Designed for use mainly off public roads while not on public roads; or
- (5) For which an insuring or bonding company denies coverage or is or becomes insolvent.

## **SOUTH DAKOTA CHANGES - CANCELLATION AND NONRENEWAL**

IL-7024(3-14)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO COVERAGE PART

COMMERCIAL GENERAL LIABILITY COVERAGE PART

DIRECTORS AND OFFICERS LIABILITY COVERAGE PART

EMPLOYEE BENEFITS LIABILITY COVERAGE PART

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART

ERRORS AND OMISSIONS COVERAGE PART

LIQUOR LIABILITY COVERAGE FORM

POLLUTION LIABILITY COVERAGE FORM

PRODUCT WITHDRAWAL COVERAGE PART

PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM

1. Paragraph 2 of the Cancellation Common Policy Condition is replaced by the following:

We may cancel this policy by mailing or delivering to the First Named Insured written notice of cancellation at least 20 days before the date cancellation takes effect.

- a. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason.
- b. When this policy has been in effect for 60 days or more or if it is a renewal with us, we may not cancel unless it is based upon at least one of the following reasons:

- (1) Nonpayment of premium;
- (2) Discovery of fraud or material misrepresentation made by or with the knowledge of the Named Insured in obtaining the policy, continuing the policy or in presenting a claim under the policy;
- (3) Discovery of acts or omissions on the part of the Named Insured which increase any hazard insured against;
- (4) The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued;

- (5) A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;

- (6) A determination by the Director of Insurance that the continuation of the policy would jeopardize our solvency or would place us in violation of the insurance laws of this state;

- (7) A violation or breach of any policy terms or conditions by the insured; or

- (8) Such other reasons as are approved by the director of insurance.

2. Paragraph 5 of the Cancellation Common Policy Condition is replaced by the following:

If this policy is cancelled, we will send the First Named Insured any premium refund due. If we cancel, the refund will be computed pro rata. If the First Named Insured cancels, the refund will be computed at 90% of pro rata. The cancellation will be effective even if we have not made or offered a refund.

3. The following Condition is added and supercedes any provision to the contrary:

### **NONRENEWAL**

If we decide not to renew this policy, we will mail or deliver to the First Named Insured written notice of nonrenewal not less than 60 days before:

- a. The expiration date; or
- b. The anniversary date if this is a continuous policy.

Any notice of nonrenewal will be mailed or delivered to the First Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

**EXCLUSION OF TERRORISM**

CA-2384F(10-13)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The following definitions are added and apply under this endorsement wherever the term terrorism, or the phrase any injury, damage, loss or expense, is shown in italics:
1. "*Terrorism*" means activities against persons, organizations or property of any nature:
    - a.** That involve the following or preparation for the following:
      - (1) Use or threat of force or violence; or
      - (2) Commission or threat of a dangerous act; or
      - (3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information or mechanical system; and
    - b.** When one or both of the following apply:
      - (1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
      - (2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.
  2. "*Any injury, damage, loss or expense*" means any injury, damage, loss or expense covered under any Coverage Form or Policy to which this endorsement is applicable, and includes but is not limited to *bodily injury, property damage, personal injury, personal and advertising injury, loss, loss of use, rental reimbursement after loss or covered pollution cost or expense*, as may be defined under this Coverage Form, Policy or any applicable endorsement.
- B.** Except with respect to Physical Damage Coverage, Trailer Interchange Coverage, Garagekeepers Coverage or Garagekeepers Coverage - Customers' Sound Receiving Equipment, the

following exclusion is added:

**Exclusion Of Terrorism**

We will not pay for *any injury, damage, loss or expense* caused directly or indirectly by *terrorism*, including action in hindering or defending against an actual or expected incident of *terrorism*. *Any injury, damage, loss or expense* is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury, damage, loss or expense. **But this exclusion applies only when one or more of the following are attributed to an incident of *terrorism*:**

1. The *terrorism* is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
2. Radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
3. The *terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials; or
5. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the *terrorism* and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
6. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
  - a.** Physical injury that involves a substantial risk of death; or
  - b.** Protracted and obvious physical disfigurement; or
  - c.** Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of *terrorism* which occur within a 72-hour period and appear to be carried

out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraphs B5 and B6 are exceeded.

With respect to this exclusion, Paragraphs B5 and B6 describe the thresholds used to measure the magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether this exclusion will apply to that incident. When the exclusion applies to an incident of *terrorism*, there is no coverage under this Coverage Form, Policy or any applicable endorsement.

- C. With respect to Physical Damage Coverage, Trailer Interchange Coverage, Garagekeepers Coverage or Garagekeepers Coverage - Customers' Sound Receiving Equipment, the following exclusion is added:

**Exclusion Of Terrorism**

We will not pay for any *loss*, loss of use or rental reimbursement after *loss* caused directly or indirectly by *terrorism*, including action in hindering or defending against an actual or expected incident of *terrorism*. **But this exclusion applies only when one or more of the following are attributed to an incident of *terrorism*:**

1. The *terrorism* is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
2. Radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
3. The *terrorism* is carried out by means of the dispersal or application of pathogenic or poi-

sonous biological or chemical materials; or

4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials; or
5. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the *terrorism* and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions.

Multiple incidents of *terrorism* which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold in Paragraph C5 is exceeded.

With respect to this exclusion, Paragraph C5 describes the threshold used to measure the magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether this exclusion will apply to that incident. When the exclusion applies to an incident of *terrorism*, there is no coverage under this Coverage Form, Policy or any applicable endorsement.

- D. In the event of any incident of *terrorism* that is not subject to the exclusion in Paragraph B or C, coverage does not apply to *any injury, damage, loss or expense* that is otherwise excluded under this Coverage Form, Policy or any applicable endorsement.

**ASBESTOS EXCLUSION**

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSE COVERAGE FORM

COMMERCIAL AUTO COVERAGE PART

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
DIRECTORS' AND OFFICERS' LIABILITY COVERAGE PART

EMPLOYEE BENEFITS LIABILITY COVERAGE PART

ERRORS AND OMISSIONS COVERAGE PART

GARAGE COVERAGE FORM

LIQUOR LIABILITY COVERAGE FORM

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM

POLLUTION LIABILITY COVERAGE FORM

IL-7012(3-14)

PRODUCT WITHDRAWAL COVERAGE PART

PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM

RAILROAD PROTECTIVE LIABILITY COVERAGE FORM

The following exclusion is added:

**Asbestos**

This insurance does not apply to any *bodily injury* or *property damage* arising out of activities related to, but not limited to, manufacture, mining, storage, distribution, installation, sale, use, exposure to, service, testing for, repair, containment or removal of asbestos, asbestos fibers, asbestos dust, or products containing asbestos.

**ACUITY ADVANTAGES - BUSINESS AUTO**

CA-7246(10-14)

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

**1. Newly Acquired Organizations**

The following is added to paragraph A1, Who Is an Insured of Section II - Liability Coverage:

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. This coverage does not apply to bodily injury or property damage that occurred before you acquired or formed the organization;
- c. No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

**2. Increased Supplementary Payments**

- a. The limit shown in paragraph A2a(2) of Section II - Liability Coverage is increased to \$2,500.
- b. The limit shown in paragraph A2a(4) of Section II - Liability Coverage is increased to \$300.

**3. Towing - Private Passenger Type Autos**

The following is added to paragraph A2, Towing of Section III - Physical Damage Coverage in the Business Auto Coverage Form and to paragraph A2, Towing - Private Passenger Type Autos under Section IV - Physical Damage Coverage in the Motor Carrier Coverage Form:

If a covered *loss* to a covered *auto* renders the vehicle undriveable, we will pay for reasonable and necessary costs to tow the vehicle to the nearest service or salvage facility. This coverage only applies to a covered *auto* insured for Comprehensive or Collision coverage. Such payments will not reduce the limits of insurance described in C Limit of Insurance.

**4. Coverage Extensions**

The following are added to paragraph A4, Coverage Extensions of Section III - Physical Damage Coverage in the Business Auto Coverage Form and to paragraph A4, Coverage Extensions under Section IV - Physical Damage Coverage in the Motor Carrier Coverage Form:

**a. Fuel in Vehicle Coverage**

We will also pay, with respect to a covered *loss*, the actual loss sustained for the *loss* to the fuel used to operate your vehicle but only with respect to a covered *auto*. You must provide documentation supporting your claim for damages.

**Deductible**

A deductible applies to this coverage. Refer to paragraph 5 Deductible Applicable to Fuel in Vehicle, Miscellaneous Equipment Used With Covered Vehicle, and Electronic Logging Devices or Electronic On-Board Recorders for further information.

**b. Miscellaneous Equipment Used With Covered Vehicle Coverage**

We will also pay, with respect to a covered *loss*, the actual cash value, repair cost or replacement cost, whichever is less, for *loss* to your miscellaneous equipment but only with respect to a covered *auto*. Miscellaneous equipment means hand trucks, dollies, pallets, pads, covers, binders, tarps, tie-downs, chains and other similar equipment used in the handling of property being transported.

**Deductible**

A deductible applies to this coverage. Refer to paragraph 5 Deductible Applicable to Fuel in Vehicle, Miscellaneous Equipment Used With Covered Vehicle, and Electronic Logging Devices or Electronic On-Board Recorders for further information.

**c. Electronic Logging Devices or Electronic On-Board Recorders**

We will also pay, with respect to a covered *loss*, up to \$3,000 for the actual loss sustained to an electronic on-board recorder or electronic logging device permanently installed in the *auto* but only with respect to a covered *auto*.

**Deductible**

A deductible applies to this coverage. Refer to paragraph 5 Deductible Applicable to Fuel in Vehicle, Miscellaneous Equipment Used with Covered Vehicle, and Electronic Logging Devices or Electronic On-Board Recorders for further information.

**5. Deductible Applicable to Fuel in Vehicle, Miscellaneous Equipment Used With Covered Vehicle, and Electronic Logging Devices or Electronic On-Board Recorders**

- a. If *loss* to property covered by these coverages is the result of a *loss* to the covered *auto* under this Coverage Form's Comprehensive or Collision Coverage, then for

each covered *auto* our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to *loss* to property covered by an extension caused by fire or lightning.

- b. If *loss* to property covered by these coverages is the result of a *loss* to the covered *auto* under this Coverage Form's Specified Causes of Loss Coverage, then for each covered *auto* our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by a \$100 deductible.
- c. In the event that there is more than one applicable deductible, only the highest deductible will apply. In no event will more than one deductible apply.

#### 6. Deductible Waiver

The following is added to paragraph D of Section III - Physical Damage Coverage in the

Business Auto Coverage Form and to paragraph D of Section IV - Physical Damage Coverage in the Motor Carrier Coverage Form:

If the insured chooses to have a damaged windshield or other glass repaired, no deductible will apply to the loss.

#### 7. Knowledge of an Occurrence

The following is added to paragraph A2, Duties in the Event of Accident, Claim, Suit or Loss of Section IV - Business Auto Conditions in the Business Auto Coverage Form and to paragraph A2, Duties in the Event of an Accident, Claim, Suit or Loss of Section V - Motor Carrier Conditions in the Motor Carrier Coverage Form:

Knowledge of an *accident*, claim, *suit*, or *loss* by an agent or *employee* of any insured shall not in itself constitute knowledge of the insured unless your partners, executive officers, directors, managers, members or a person who has been designated by them to receive reports of *accidents*, claims, *suits* or *loss* shall have received such notice from the agent or *employee*.

#### EXCLUSION OF NAMED DRIVER

IL-7042(3-03)

This endorsement modifies insurance provided under the following:

AUTO MEDICAL PAYMENTS COVERAGE  
BUSINESS AUTO COVERAGE FORM  
COMMERCIAL EXCESS LIABILITY COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

#### UNINSURED AND UNDERINSURED MOTORISTS COVERAGE

This insurance does not apply while any person named in the Schedule is using, operating or controlling any covered *auto*. However, this exclusion does not apply while the person named in the Schedule is engaged in any of the activities described in the Schedule.

SCHEDULE		
Name of Excluded Driver	Date of Birth	Covered Activities
COLTON OLOFSON	10-28-92	NONE
AUSTIN RAUK	03-05-94	NONE

**NUCLEAR ENERGY LIABILITY EXCLUSION - BROAD FORM**

IL-0021F(3-14)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTO COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 DIRECTORS' AND OFFICERS' LIABILITY COVERAGE PART  
 EMPLOYEE BENEFITS LIABILITY COVERAGE PART  
 ERRORS AND OMISSIONS COVERAGE PART  
 FARM COVERAGE PART  
 LIQUOR LIABILITY COVERAGE FORM  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM  
 POLLUTION LIABILITY COVERAGE FORM  
 PRODUCT WITHDRAWAL COVERAGE PART  
 PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM  
 RAILROAD PROTECTIVE LIABILITY COVERAGE FORM

1. The insurance does not apply:

a. Under any Liability Coverage to *bodily injury* or *property damage*:

- (1) With respect to which an *insured* under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

- (2) Resulting from the *hazardous properties* of *nuclear material* and with respect to which:

- (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof; or
- (b) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

b. Under any Medical Payments coverage, to expenses incurred with respect to *bodily injury* resulting from the *hazardous properties* of *nuclear material* and arising out of the operation of a *nuclear facility* by any person or organization.

c. Under any Liability Coverage, to *bodily injury* or *property damage* resulting from the *hazardous properties* of *nuclear material*, if:

- (1) The *nuclear material*:

- (a) Is at any *nuclear facility* owned by, or operated by or on behalf of, an *insured*; or

- (b) Has been discharged or dispersed therefrom.

- (2) The *nuclear material* is contained in *spent fuel* or *waste* at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an *insured*; or

- (3) The *bodily injury* or *property damage* arises out of the furnishing by an *insured* of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any *nuclear facility*, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to *property damage* to such *nuclear facility* and any property thereat.

2. As used in this endorsement:

- a. "*Hazardous properties*" include radioactive, toxic or explosive properties.

- b. "*Nuclear material*" means *source material*, *special nuclear material* or *byproduct material*.

- c. "*Source material*," "*special nuclear material*" and "*byproduct material*" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

- d. "*Spent fuel*" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a *nuclear reactor*.

- e. "*Waste*" means any waste material:

- (1) Containing *byproducts material* other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its *source material* content; and

- (2) Resulting from the operation by any person or organization of any *nuclear facility* included under the first two paragraphs of the definition of *nuclear facility*.

- f. "*Nuclear facility*" means:

- (1) Any *nuclear reactor*;

- (2) Any equipment or device designed or used for:

- (a) Separating the isotopes of uranium or plutonium;

- (b) Processing or utilizing *spent fuel*; or

- (c) Handling, processing or packaging waste.
- (3) Any equipment or device used for the processing, fabricating or alloying of *special nuclear material* if at any time the total amount of such material in the custody of the *insured* at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.
- (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste;  
and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
- g. "*Nuclear reactor*" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.
- h. "*Property damage*" includes all forms of radioactive contamination of property.

**AUTO MEDICAL PAYMENTS COVERAGE**

CA-9903F(3-06)

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

**1. COVERAGE**

We will pay reasonable expenses incurred for necessary medical and funeral services to or for an *insured* who sustains *bodily injury* caused by an *accident*. We will pay only those expenses incurred within three years from the date of the *accident*.

**2. WHO IS AN INSURED**

- a. You while *occupying* or, while a pedestrian, when struck by any *auto*.
- b. If you are an individual, any *family member* while *occupying* any *auto* or, while a pedestrian, when struck by any *auto*.
- c. Anyone else *occupying* a covered *auto* or a temporary substitute for a covered *auto*. The covered *auto* must be out of service because of its breakdown, repair, servicing, loss or destruction.

**3. EXCLUSIONS**

This insurance does not apply to any of the following:

- a. *Bodily injury* sustained by an *insured* while *occupying* a vehicle located for use as a premises.
- b. *Bodily injury* sustained by you or any *family member* while *occupying* or struck by any vehicle (other than a covered *auto*) owned by you or furnished or available for your regular use.
- c. *Bodily injury* sustained by any *family member* while *occupying* or struck by any vehicle (other than a covered *auto*) owned by or furnished or available for the regular use of any *family member*.
- d. *Bodily injury* to your *employee* arising out of and in the course of employment by you. However we will cover *bodily injury* to your domestic *employees* if not entitled to workers' compensation benefits. For the purposes of this endorsement, a domestic *employee* is a person engaged in household or domestic work performed principally in connection with a residence premises.
- e. *Bodily injury* to an *insured* while working in a business of selling, servicing, repairing or

parking *autos* unless that business is yours.

- f. *Bodily injury* arising directly or indirectly out of:
  - (1) War, including undeclared or civil war;
  - (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- g. *Bodily injury* to anyone using a vehicle without a reasonable belief that the person is entitled to do so.
- h. *Bodily injury* sustained by an *insured* while *occupying* any covered *auto* while used in any professional racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply to any *bodily injury* sustained by an *insured* while the *auto* is being prepared for such a contest or activity.

**4. LIMIT OF INSURANCE**

Regardless of the number of covered *autos*, *insureds*, premiums paid, claims made or vehicles involved in the *accident*, the most we will pay for *bodily injury* for each *insured* injured in any one *accident* is the Limit of Insurance for Auto Medical Payments Coverage shown in the Declarations.

No one will be entitled to receive duplicate payments for the same elements of *loss* under this coverage and any Liability Coverage Form, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

**5. CHANGES IN CONDITIONS**

The Conditions are changed for Auto Medical Payments Coverage as follows:

- a. The Transfer of Rights of Recovery Against Others to Us Condition does not apply.
- b. The reference in Other Insurance in the Business Auto and Garage Coverage Forms and Other Insurance - Primary and Excess Insurance Provisions in the Truckers and Motor Carrier Coverage Forms to "other collectible insurance" applies only to other collectible auto medical payments insurance.

**6. ADDITIONAL DEFINITIONS**

As used in this endorsement:

- a. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.

- b. "Occupying" means in, upon, getting in, on, out or off.

## SOUTH DAKOTA CHANGES

CA-7074(11-12)

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

For a covered *auto* licensed in, or *garage operations* conducted in, South Dakota:

### 1. Changes in Liability Coverage

- a. Paragraph 3a(2)(d) of the Who Is An Insured provision in the Garage Coverage Form does not apply.
- b. The following exclusion is added to Section II - Liability Coverage:
- This insurance does not apply to punitive or exemplary damages.

### 2. Under Physical Damage Coverage:

The Limit of Insurance provision with respect to repair or replacement resulting in better than like kind or quality is replaced by the following, and supersedes any provision to the contrary:

We may deduct for betterment from the amount we pay for the *loss* only if the repair or replacement results in an increase in the fair market value of the vehicle.

Betterment as used in this provision means the difference between:

- a. The fair market value of the vehicle before the *loss*; and
- b. The fair market value of the vehicle after repair or replacement.

### 3. The *Diminution of Value* exclusion is replaced by the following:

We will not pay for *loss* to a covered *auto* due to *diminution of value*. This exclusion applies unless the covered *auto* is not substantively physically repaired to its pre-*loss* condition.

### 4. The following is added to the Deductible section under Physical Damage Coverage:

With respect to damage to a windshield, you may choose to have the windshield repaired or replaced. If you choose to have it repaired, we will waive any Physical Damage Coverage de-

ductible applying to the *loss*.

### 5. The Appraisal for Physical Damage Loss Loss Condition is replaced by the following:

If you and we disagree on the amount of *loss*, an appraisal of the *loss* may take place if both you and we agree to the appraisal procedure. In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of *loss*. If they fail to agree, they will submit their differences to the umpire. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

Appraisals are not binding. Any decision may be appealed to a court of competent jurisdiction.

### 6. The Legal Action Against Us Loss Condition is replaced by the following:

No one has the right under this policy to bring us into an action to determine the *insured's* liability.

### 7. The Other Insurance General Condition in the Business Auto and Garage Coverage Forms and the Other Insurance - Primary and Excess Insurance Provisions General Condition in the Truckers and Motor Carrier Coverage Forms is replaced by the following:

When two coverage forms providing liability coverage apply to an *auto* and:

- a. One provides coverage to a named insured engaged in the business of selling, repairing, servicing, storing or parking *autos*;
- b. The other provides coverage to a person not engaged in that business; and
- c. At the time of an *accident* a person described in b is operating an *auto* owned by the business described in a;

then that person's liability coverage is primary and the coverage form issued to a business described in a is excess over any coverage available to that person.

**COMMON POLICY CONDITIONS**

IL-0017F(11-98)

All Coverage Parts included in this policy are subject to the following conditions.

**A. CANCELLATION**

1. The First Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

2. We may cancel this policy by mailing or delivering to the First Named Insured written notice of cancellation at least:

a. Ten days before the effective date of cancellation if we cancel for nonpayment of premium; or

b. Thirty days before the effective date of cancellation if we cancel for any other reason.

3. We will mail or deliver our notice to the First Named Insured's last mailing address known to us.

4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

5. If this policy is cancelled, we will send the First Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the First Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

6. If notice is mailed, proof of mailing will be sufficient proof of notice.

**B. CHANGES**

This policy contains all the agreements between you and us concerning the insurance afforded. The First Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

**C. EXAMINATION OF YOUR BOOKS AND RECORDS**

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

**D. INSPECTIONS AND SURVEYS**

1. We have the right to:

a. Make inspections and surveys at any time;

b. Give you reports on the conditions we find; and

c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

a. Are safe or healthful; or

b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1 and 2 of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2 of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

**E. PREMIUMS**

The First Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and

2. Will be the payee for any return premiums we pay.

**F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

**LOSS PAYABLE CLAUSE**

CA-7027(12-93)

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

1. We will pay, as interest may appear, you and the loss payee named in the Schedule for *loss* to a covered *auto*.

2. The insurance covers the interest of the loss payee unless the *loss* results from conversion, secretion or embezzlement on your part.

**3. CANCELLATION**

a. If we cancel the policy for any reason other than nonpayment of premium, we will mail notice to the loss payee in accordance with the Cancellation Common Policy Condition.

b. If the policy is cancelled due to nonpayment of premium, we will mail to the loss payee, a copy of the policy lapse notice we send the insured.

c. If notice is mailed, proof of mailing will be sufficient proof of notice.

d. Cancellation ends this agreement.

4. If we make any payment to the loss payee, we will obtain their rights against any other party.

**SCHEDULE****First Named Insured and Address:**

HULTGREN CONSTRUCTION LLC  
402 W 9TH ST  
SIOUX FALLS SD 57104

**Company Name and Address:**

ACUITY, A Mutual Insurance Company  
2800 South Taylor Drive  
PO Box 58  
Sheboygan, WI 53082-0058

**Loss Payee (Name and Address)**

SUNTRUST BANK  
PO BOX 792270  
SAN ANTONIO TX 78279

**Agency Name and Number:**

BOEN & ASSOCIATES, INC  
2979-AY

Policy Number: X87409

Policy Period: Effective Date: 01-20-16

Expiration Date: 01-20-17

Unit Number	Model Year	Description of Applicable Vehicles		
		Vehicle Description	ID Number	
010	2015	FORD F150 SUPER CAB	1FTEX1EP6FKE75615	
Physical Damage Deductibles				
Unit Number		Comprehensive	Specified Causes of Loss	Collision
010		\$ 500		\$ 500

**LOSS PAYABLE CLAUSE**

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GARAGE COVERAGE FORM

MOTOR CARRIER COVERAGE FORM

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With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

1. We will pay, as interest may appear, you and the loss payee named in the Schedule for *loss* to a covered *auto*.

2. The insurance covers the interest of the loss payee unless the *loss* results from conversion, secretion or embezzlement on your part.

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c. If notice is mailed, proof of mailing will be sufficient proof of notice.

d. Cancellation ends this agreement.

4. If we make any payment to the loss payee, we will obtain their rights against any other party.

**SCHEDULE****First Named Insured and Address:**

HULTGREN CONSTRUCTION LLC  
402 W 9TH ST  
SIOUX FALLS SD 57104

**Company Name and Address:**

ACUITY, A Mutual Insurance Company  
2800 South Taylor Drive  
PO Box 58  
Sheboygan, WI 53082-0058

**Loss Payee (Name and Address)**

VOYAGE FCU  
3823 S KIWANIS CIR  
SIOUX FALLS SD 57105

**Agency Name and Number:**

BOEN & ASSOCIATES, INC  
2979-AY

Policy Number: X87409

Policy Period: Effective Date: 01-20-16

Expiration Date: 01-20-17

Unit Number	Description of Applicable Vehicles		
	Model Year	Vehicle Description	ID Number
004	2004	FORD F450 SUPER DUTY	1FDXX47P24EC15274
007	2014	CARRYON 8X24 CARGO TRAILER	4YMCL249EM006839
009	2006	CHEVROLET SILVERADO K2500HD	1GCHK23D76F138518
015	2004	FORD F450 SUPER DUTY	1FDXF47P44ED25584

Unit Number	Physical Damage Deductibles		
	Comprehensive	Specified Causes of Loss	Collision
004	\$ 500		\$ 500
007	500		500
009	500		500
015	500		500



**COMMERCIAL INLAND MARINE  
CHANGES**

First Named Insured and Address:

HULTGREN CONSTRUCTION LLC  
402 W 9TH ST  
SIOUX FALLS SD 57104

Agency Name and Number:

BOEN & ASSOCIATES, INC  
2979-AY

Policy Number: X87409

Change Effective Date: 01-20-16

**PREMIUM SUMMARY**

**This is not a bill. If premium is due, a billing notice will be sent separately.**

No Additional or Return Premium  
Direct Billed

**CHANGES:**



## COMMERCIAL INLAND MARINE COVERAGE PART

### Amended Declarations

First Named Insured and Address:

HULTGREN CONSTRUCTION LLC  
402 W 9TH ST  
SIOUX FALLS SD 57104

Agency Name and Number:

BOEN & ASSOCIATES, INC  
2979-AY

Policy Number: X87409

Policy Period: Effective Date: 01-20-16

Expiration Date: 01-20-17

In return for the payment of the premium and subject to  
all the terms of the policy, we agree to provide the  
insurance coverage as stated in the same.

12:01 A.M. standard time at  
your mailing address shown  
in the declarations

### COVERAGE FORMS AND ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART

Form Number	Form Title	Premium
IL-0017F (11-98)	Common Policy Conditions .....	\$
IM-7100 (10-11)	South Dakota Changes .....	
IM-7140 (06-99)	Computer Coverage Form .....	
IM-100R (11-01)	Inland Marine General Terms .....	
IL-0995R (01-15)	Conditional Exclusion of Terrorism (Relating to Disposition of Federal Act)	
IL-7080 (01-15)	Cap on Losses from Certified Acts of Terrorism .....	6.00
IL-7082 (01-15)	Disclosure Pursuant to Terrorism Risk Insurance Act .....	
<b>Advance Endorsement Premium .....</b>		<b>\$ 6.00</b>

### PREMIUM SUMMARY

Advance Premium .....	\$ 186.00
Advance Endorsement Premium .....	6.00
<b>Total Advance Premium .....</b>	<b>\$ 192.00</b>

### ADDITIONAL NAMED INSUREDS

WHO IS AN INSURED includes the following Additional Named Insureds:

NONE

**COMPUTER COVERAGE FORM****A. DEFINITIONS**

1. *"Electrical disturbance"* means electrical or magnetic damage, disturbance of electronic recordings or erasure of electronic recordings.
2. *"Hardware"* means an assemblage of electronic machine components capable of accepting instructions and information, processing the information according to the instructions and producing desired results.
3. *"Limit"* means the amount of coverage that applies.
4. *"Mechanical breakdown"* means mechanical breakdown or malfunction, component failure, faulty installation or blowout.
5. *"Operations"* means your normal electronic data processing operations.
6. *"Pollutant"* means:
  - a. Any solid, liquid, gaseous or thermal irritant or contaminant;
  - b. Electromagnetic (visible or invisible) or sound emission; or
  - c. Waste, including materials to be disposed of as well as recycled, reclaimed or reconditioned.
7. *"Power supply disturbance"* means interruption of power supply, power surge, blackout or brownout.
8. *"Restoration period"* means the time it should take to resume your *operations* starting from the date of loss to covered property caused by a covered peril, and ending on the date the property should be rebuilt, repaired or replaced. This is not limited by the end of the policy period.

This does not include any increase in time due to the enforcement of any ordinance, law or decree that:

- a. Regulates the construction, use, repair or demolition of any property; or
- b. Requires the testing, evaluating, observing or recording the existence, level or effects of *pollutants*.

9. *"Software"* means:

- a. Processing, recording or storage media used for electronic data processing operations. This includes films, tapes, cards, discs, drums, cartridges or cells; and
- b. Data, information and instructions stored on processing, recording or storage media used for electronic data processing operations.

**B. PROPERTY COVERED**

We cover direct physical loss caused by a covered peril to covered property.

Covered property consists of:

1. Your *hardware* and *software*; and

2. Similar property of others that is in your care, custody or control.

**C. PROPERTY NOT COVERED**

1. **Accounts, Bills or Documents.**

We do not cover accounts, bills, evidences of debt, records, abstracts, deeds, manuscripts, program documentation or other documents except those that are in *software* form and then only in that form.

2. **Contraband.**

We do not cover contraband or property in the course of illegal transportation or trade.

3. **Loaned, Leased or Rented to Others.**

We do not cover property that you loan, lease or rent to others.

4. **Money and Securities.**

We do not cover currency, food stamps, lottery tickets not held for sale, money, notes or securities.

5. **Stock in Trade.**

We do not cover your stock in trade.

6. **Vehicle Components.**

We do not cover *hardware* or *software* which is permanently installed or designed to be permanently installed in any aircraft, watercraft, motortruck or other vehicle subject to motor vehicle registration.

**D. ADDITIONAL COVERAGES**

1. **Debris Removal.**

We pay the cost to remove the debris of covered property that is caused by a covered peril. This coverage does not include costs to:

- a. Extract *pollutants* from land or water; or
- b. Remove, restore or replace polluted land or water.

We will not pay any more under this coverage than 25% of the amount we pay for the direct loss. We will not pay more for loss to property and debris removal combined than the *limit* for the damaged property. However, we will pay an additional amount of debris removal expense up to \$10,000 when the debris removal expense exceeds 25% of the amount we pay for direct loss or when the loss to property and debris removal combined exceeds the *limit* for the damaged property.

We do not pay any expenses unless they are reported to us in writing within 180 days from the date of direct physical loss to covered property.

2. **Disturbance and Mechanical Breakdown Coverage.**

We pay for loss to covered property caused by *mechanical breakdown*. We also pay for loss to covered property caused by *electrical disturbance* and *power supply disturbance*.

### 3. Emergency Removal.

We pay for loss to covered property while it is moved or being moved to prevent a loss caused by a covered peril. We pay for any direct physical loss caused by a peril that is not excluded. This coverage applies for up to thirty days after the property is first moved, but does not extend past the date on which this policy expires.

### 4. Extra Expense.

We pay the necessary extra expenses that you incur in order to resume or continue your *operations* which are interrupted due to direct physical loss caused by a covered peril to covered property. We cover only the extra expenses that you incur during the *restoration period* and that are necessary to resume or continue your *operations* as nearly as practicable.

We also cover extra expenses that you incur as a result of:

- a. Damage to a premises if that damage prevents you from using the covered property;
- b. Damage to the air conditioning or electrical system which is necessary for the operation of the *hardware* and results in a reduction or suspension of your *operations*. The cause of the damage must occur within 500 feet of the premises on which the *hardware* is located; or
- c. An order by a civil authority that specifically denies you access to a premises where you have covered property. The order must be as a result of damage caused by a covered peril to the premises or to an adjacent property. This extension is limited to two consecutive weeks from the date of the order. This does not increase the *limit*.

The most we will pay for extra expenses that you incur because of one occurrence is the Extra Expense Limit shown on the Schedule.

### 5. Newly Purchased or Leased Hardware.

In the event that you purchase or lease additional *hardware* during the policy period, we extend coverage to the additional *hardware* for up to 60 days. The most we pay for any loss under this additional coverage is the least of:

- a. The actual cash value of the covered property;
- b. The *Hardware Limit* shown on the Schedule; or
- c. \$250,000.

This additional coverage will end when any of the following first occur:

- a. This policy expires;
- b. 60 days after you obtain the additional *hardware*; or
- c. You report the additional *hardware* to us.

### 6. Pollutant Cleanup and Removal.

We pay your expense to extract *pollutants* from land or water if the discharge, dispersal, seepage, migration, release or escape of the *pollutants* is caused by a covered peril that occurs during the policy period.

The expenses are paid only if they are reported to us in writing within 180 days from the date the covered peril occurs.

We do not pay the cost of testing, evaluating, observing or recording the existence level or effects of *pollutants*. However, we pay the cost of testing which is necessary for the extraction of *pollutants* from the land or water.

The most we pay for each site or location is \$10,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12 month period of this policy.

### 7. Software Storage.

We cover duplicate and back-up *software* which is stored at a premises where you do not conduct *operations* with that *software* and which is not covered under any other coverage form. The most we pay for loss to *software* at any one storage location is \$25,000. We do not include the value of duplicate *software* stored at a premises where you do not conduct *operations* when applying the Coinsurance condition.

### E. PERILS COVERED

We cover external risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

### F. PERILS EXCLUDED

1. We do not pay for loss or damage if one or more of the following exclusions apply to the loss.

#### a. Criminal, Fraudulent or Dishonest Acts.

We do not pay for loss caused by or resulting from criminal, fraudulent, dishonest or illegal acts alone or in collusion with another by:

- (1) You;
- (2) Others who have an interest in the property;
- (3) Others to whom you entrust the property;
- (4) Your partners, officers, directors, trustees or joint adventurers; or
- (5) The employees of agents of (1), (2), (3) or (4) above, whether or not they are at work.

This exclusion does not apply to acts of destruction by your employees, but we do not pay for theft by employees.

This exclusion does not apply to covered property in the custody of a carrier for hire.

#### b. Deterioration, Fault or Weakness.

We do not pay for deterioration; decay; or any quality, fault or weakness in the covered property that causes it to damage or destroy itself. This exclusion does not apply to loss caused by *mechanical breakdown*.

#### c. Lease Terms.

We do not pay for loss caused by a covered peril for which you are not responsible under the terms of any lease or rental agreement.

**d. Loss of Use.**

We do not pay for loss caused by or resulting from loss of use, business interruption, delay or loss of market.

This exclusion does not apply to Extra Expense coverage as provided under Additional Coverages.

**e. Pollutants.**

We do not pay for loss caused by or resulting from release, discharge, seepage, migration, dispersal or escape of *pollutants*.

This exclusion does not apply to *Pollutant* Clean-Up and Removal coverage as provided under Additional Coverages.

**f. Temperature, Humidity, Corrosion or Rust.**

We do not pay for loss caused by corrosion, rust, humidity, dampness, dryness or changes in or extremes of temperature.

We do pay for loss to covered property that results from a direct physical loss caused by a covered peril to the air conditioning system that services covered *hardware*.

2. We do not pay for extra expenses that you incur if one or more of the following exclusions apply.

**a. Error or Omission.**

We do not pay for extra expense caused by error or omission in programming or incorrect instructions to *hardware*.

**b. Leases, Licenses, Contracts or Orders.**

We do not pay for any increase in extra expenses due to the suspension, lapse or cancellation of leases, licenses, contracts or orders. However, we do cover loss during the *restoration period* if the suspension, lapse or cancellation results directly from the interruption of your *operations*.

We do not cover any extra expense beyond the *restoration period* caused by the suspension, lapse or cancellation of leases, licenses, contracts or orders.

**c. Strikes, Protests or Interference.**

We do not pay for any increase in extra expenses due to interference by strikers or other persons. This applies to interference with rebuilding, repairing or replacing covered property or with the resumption of *operations*.

3. There are other perils that are not covered. These are listed in the Inland Marine General Terms.

**G. VALUATION****1. Actual Cash Value.**

When Actual Cash Value is indicated on the Schedule, the value of covered property is based on the

actual cash value at the time of loss (with a deduction for depreciation) except as provided in paragraphs 2, 3 and 4 under Valuation.

**2. Replacement Cost.**

When Replacement Cost is indicated on the Schedule, the value of covered property will be based on the replacement cost without any deduction for depreciation.

The replacement cost is limited to the cost of repair or replacement with similar materials on the same site and used for the same purpose. The payment shall not exceed the amount you spend to repair or replace the damaged or destroyed property.

Replacement cost valuation does not apply until the damaged or destroyed property is repaired or replaced. You may make a claim for actual cash value before repair or replacement takes place and later for the replacement cost if you notify us of your intent within 180 days after the loss.

**H. HOW MUCH WE PAY****1. Pair or Set.**

The Loss to Pairs or Sets Inland Marine General Condition does not apply to *software* that comes in sets. If part of a *software* set cannot be replaced, the loss is considered a total loss of the set.

**2. Deductible.**

We pay only that part of your loss over the deductible amount indicated on the Schedule in any one occurrence.

**3. Coinsurance.**

We only pay a part of the loss if the *limit* is less than the percentage of the value of the covered property that is indicated on the Schedule. Our part of the loss is determined using the following steps:

**a.** Multiply the Coinsurance Percentage indicated on the Schedule by the value of the covered property at the time of loss;

**b.** Divide the *limit* for covered property by the result determined in 3a above;

**c.** Multiply the total amount of loss, after application of any deductible, by the result determined in 3b above.

The most we pay is the amount determined in 3c above or the *limit*, whichever is less. We do not pay any remaining part of the loss.

If there is more than one *limit* indicated on the Schedule, this procedure applies separately for each *limit*.

If there is only one *limit* indicated on the Schedule, this procedure applies to the total of all covered property to which the *limit* applies.

**SCHEDULE**

<u><i>Hardware Limit</i></u>	<u><i>Software Limit</i></u>	<u><i>Extra Expense Limit</i></u>
\$ 7,567	\$ 36,655	\$ 10,000
<u><b>Deductible Amount</b></u>	<u><b>Covered Property Valuation</b></u>	<u><b>Coinsurance Percentage</b></u>
\$1,000	REPLACEMENT COST	80%

## INLAND MARINE GENERAL TERMS

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

This policy is subject to the following *terms*, the Common Policy Conditions and other applicable *terms* in the Commercial Inland Marine Coverage Forms.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in italics have special meaning. Refer to Section A, Definitions.

### A. DEFINITIONS

1. "*Insured*" means you. With respect to covered property that is not used for *business*, the word *insured* also means:
  - a. Your spouse;
  - b. Your relatives if residents of your household;
  - c. Persons under the age of 21 in your care or the care of your resident relatives; or
  - d. Your legal representative if you die while insured by this policy. (This person is an *insured* only for the covered property.)
2. "*Business*" means a trade, profession or occupation whether full or part time. This includes:
  - a. The rental of property to others; and
  - b. Farming.
3. "*Described premises*" means that part of the building and grounds which you occupy at the location shown.
4. "*Terms*" means the conditions, definitions, exclusions, limitations and provisions used in this policy.

### B. PERILS EXCLUDED

We do not pay for a loss if one or more of the following excluded perils apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded peril. We do not pay for a loss that results from:

1. Wear and tear to covered property.
2. Gradual deterioration of covered property.
3. A fault or weakness that is intrinsic to the property which causes it to break, spoil, become defective or destroy itself.
4. Insects or vermin damage to covered property.
5. Delay, loss of market, loss of use or *business* interruption.

6. Obsolescence or depreciation of covered property.
7. War. This means:
  - a. Declared war, undeclared war, civil war, insurrection, rebellion or revolution;
  - b. A warlike act by a military force or by military personnel;
  - c. The destruction, seizure or use of the property for a military purpose; or
  - d. The discharge of a nuclear weapon even if it is accidental.
8. Civil Authority. This means:
  - a. Seizure or destruction under quarantine or customs regulations;
  - b. Confiscation or destruction by order of a government or public authority; or
  - c. Risks of contraband or illegal transportation or trade.
9. Nuclear Hazard. This means nuclear reaction, nuclear radiation or radioactive contamination:
  - a. Whether controlled or uncontrolled; or
  - b. Caused by, contributed to or aggravated by a peril covered by this policy. A loss caused by nuclear hazard will not be considered to be a loss caused by fire, explosion or smoke. If fire is covered by this policy, we do cover the loss caused by a fire that results from the nuclear hazard.
10. Other perils that are not covered. These are listed for each coverage.

We do not pay for such excluded loss even if the following contribute to, aggravate or cause the loss:

1. The act or decision of a person, group, organization or governmental body. This includes the failure to act or decide.
2. A fault, defect or error, negligent or not, in:
  - a. Planning, zoning, surveying, siting, grading, compacting, land use or development of property.
  - b. The design, blueprint, specification, workmanship, construction, renovation, remodeling or repair of property. This includes the materials needed to construct, remodel or repair the property.
  - c. Maintenance of property.

These apply whether or not the property is covered by this policy.

3. A condition of the weather.
4. The collapse of a building or structure except as provided under the Builders' Risk Coverage Form, and the Property In The Course Of Construction Coverage Form.

**C. WHAT MUST BE DONE IN CASE OF LOSS****1. Protect the Property**

The *insured* must take all reasonable steps to protect or recover the covered property after a loss has occurred.

**2. Notice**

The *insured* must promptly notify us or our agent, in writing if requested.

**3. Notice to Police**

The *insured* must promptly notify the police if the loss results from a violation of the law.

**4. Proof of Loss**

The *insured* must send us a statement of loss, under oath if requested, within 90 days after the loss occurs. The following information must be included:

- a. The date, time, place and details of the loss;
- b. Other insurance that may cover the loss;
- c. Your interest and the interest of all others in the property involved in the loss. This includes all mortgages and liens;
- d. Changes in the title to the covered property during the policy period;
- e. Detailed estimates for the repair or replacement of the covered property; and
- f. An inventory of lost, damaged and all remaining covered property. This must show in detail the quantity, description, cost and actual cash value of the property and the amount of the loss. Copies of all bills, receipts and related documents that substantiate the inventory must be attached.

**5. Additional Duties**

As often as we may reasonably request, an *insured* must:

- a. Submit to an examination under oath;
- b. Assist us in obtaining the attendance of employees for examination under oath;
- c. Exhibit damaged and undamaged property; and
- d. Produce all records that relate to value, loss and cost, and permit copies and abstracts to be made from them.

**6. Cooperation**

The *insured* must cooperate with us in performing all acts that are required by this Inland Marine coverage.

**7. Volunteer Payments**

The *insured* may not voluntarily make payments, assume obligations, pay or offer rewards or incur other expenses, except at the *insured's* own expense.

**8. Abandonment**

The *insured* may not abandon the property to us without our written consent.

**D. HOW MUCH WE PAY****1. Actual Cash Value**

Actual cash value includes a deduction for depreciation, however caused.

**2. Valuation**

Valuation is based on the actual cash value of the property at the time of loss.

**3. The Amount We Pay**

The smallest of the amounts shown below is the most that we will pay for a loss:

- a. The amount determined under Valuation;
- b. The cost to repair, replace or rebuild the property with material of like kind and quality;
- c. The amount of your interest in the property; or
- d. The coverage amount shown.

This amount will be adjusted by the deductible amount, coinsurance penalty or other limitation which may apply.

**4. Loss to Pairs or Sets**

If there is a loss to an item that is part of a pair or set, at your option we will pay the full actual cash value up to the coverage amount shown for the pair or set. You will give us the remainder of the pair or set. If you do not choose this option, we will pay only for a reasonable part of the actual cash value of the pair or set.

**5. Loss to Parts**

If there is a loss to a part of an item that consists of several parts, we will pay only for the loss to that part. A loss to a part is not considered to be a loss to the whole item.

**6. Insurance Under More Than One Policy**

If there is other collectible insurance that applies to a covered loss, or would have applied in the absence of this Inland Marine coverage, we will pay for the loss only after the full amount from the other insurance has been paid.

**7. Insurance Under More Than One Coverage**

If more than one coverage applies to the same loss, we will pay no more than the actual amount of the loss.

**8. Losses Paid by Others**

We will not pay for that part of a loss that has been paid by someone else.

**9. Restoring the Coverage Amount**

The payment of a claim will not reduce the

coverage amount. If we pay a loss for items that are separately listed and the coverage amount that applies to these items is reduced at your request, we will return the unearned premium for these items to you.

## **E. LOSS PAYMENT**

### **1. Our Options**

We may:

- a. Pay the loss in money; or
- b. Repair, replace or rebuild the property. We must give the *insured* notice of our intent to do so within 30 days after we have received a satisfactory proof of loss.

We may take all or a part of the damaged property at the agreed or appraised value. Property that we have paid for or replaced will become our property.

### **2. Your Property**

We will adjust all losses with you. Payment will be made to you unless a loss payee is named with respect to this Inland Marine coverage.

### **3. Property of Others**

Loss to property of others may be adjusted with you. We reserve the right to adjust the loss with the owner. Our payment to the owner will satisfy our obligation to you for loss to this property. At our option, without cost to you, we may choose to defend you from suits which result from a covered loss to the property of others.

### **4. When We Pay**

We will pay for a loss within 30 days after a satisfactory proof of loss is received and the amount of the loss has been agreed to in writing.

## **F. CLAIMS AGAINST OTHERS**

### **1. Subrogation**

If we pay for a loss, we may require the *insured* to assign to us the right of recovery against others. We will not pay for a loss if the *insured* impairs this right to recover. The *insured's* right to recover from others may be waived in writing before a loss occurs.

### **2. Loan Receipts**

When we believe that a loss can be recovered from others:

- a. We may make an advance payment to you in the form of a loan.
- b. At our expense, we will be allowed to bring suit in the *insured's* name against those who are responsible for the loss.
- c. The loan will be repaid from the amount recovered.

### **3. Recoveries**

The *insured* must notify us or we must notify

the *insured* promptly if either receives a recovery for a loss which we have paid. The costs that are incurred by either party in making the recovery are to be reimbursed first. We are entitled to the surplus up to the amount that we have paid for the loss. The *insured* may then keep any excess.

## **G. DISAGREEMENTS**

### **1. Appraisal**

If you and we do not agree on the amount of the loss, the actual cash value of the property or the cost to repair or replace the property, either party may demand that these amounts be determined by appraisal.

If either party makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days after the receipt of the written demand. The two appraisers will select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court in the state where the appraisal is pending to select an umpire.

The appraisers will determine:

- a. The amount of the loss;
- b. The actual cash value of the property; and
- c. The cost to repair or replace the property.

Each amount will be stated separately.

If the appraisers submit a written report of an agreement to us, the agreement will establish these amounts. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. A written agreement by any two of these three will establish the amounts stated above.

Each appraiser will be paid by the party selecting that appraiser. The compensation of the umpire and other expenses of the appraisal will be shared equally by you and us.

### **2. Suit Against Us**

No suit to recover for a loss may be brought against us unless:

- a. All the *terms* of this Inland Marine coverage have been complied with; and
- b. The suit is commenced within one year after the loss.

## **H. OTHER POLICY CONDITIONS**

### **1. Conformity With Statutes**

The *terms* of this Inland Marine coverage in conflict with statutes of the state where this policy is issued are changed to conform to those statutes.

## 2. Continuous Policies

If this policy is issued on a continuous basis (with no specific date of expiration), we may substitute or we may add at each anniversary date the forms and endorsements then authorized for use with this Inland Marine coverage.

## 3. Liberalization

If a revision of a form or endorsement which would broaden coverage without an additional premium is adopted during the policy period or within six months before the Inland Marine coverage is effective, the broadened coverage will apply.

## 4. Misrepresentation, Concealment or Fraud

This Inland Marine coverage is void if before or after a loss:

- a. The *insured* has concealed or misrepresented:
  - (1) A material fact or circumstance that relates to this insurance or the subject thereof; or
  - (2) An *insured's* interest herein.
- b. There has been fraud or false swearing by an *insured* with regard to a matter that relates to this insurance or the subject thereof.

## 5. No Benefit to Bailee

This Inland Marine coverage will not benefit those who are paid to assume custody of the covered property.

## 6. Reporting Terms Only

This Inland Marine coverage may be subject to reporting *terms*. If it is cancelled, you must report the required amounts as of the cancellation date.

## 7. Premium Audit

- a. The estimated premium for this declaration is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the *insured* will be billed for the balance, if any. We will send notice to you, and the due date for the audit premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the *insured* will get a refund.
- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

**CONDITIONAL EXCLUSION OF TERRORISM (RELATING TO DISPOSITION OF FEDERAL TERRORISM RISK INSURANCE ACT)**

IL-0995R(1-15)

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART

**A. Applicability Of The Provisions Of This Endorsement**

1. The provisions of this endorsement will become applicable commencing on the date when any one or more of the following first occurs. But if your policy (meaning the policy period in which this endorsement applies) begins after such date, then the provisions of this endorsement become applicable on the date your policy begins.

a. The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act, has terminated with respect to the type of insurance provided under this Coverage Part; or

b. A renewal, extension or replacement of the Program has become effective without a requirement to make terrorism coverage available to you and with revisions that:

(1) Increase our statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all certified terrorism losses we must pay in a calendar year, before the federal government shares in subsequent payment of certified terrorism losses.); or

(2) Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or

(3) Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.

2. If the provisions of this endorsement become applicable, such provisions:

a. Supersede any terrorism endorsement already endorsed to this policy that addresses *certified acts of terrorism* and/or *other acts of terrorism*, but only with respect to loss or damage from an incident(s) of terrorism (however defined) that occurs on or

after the date when the provisions of this endorsement become applicable; and

b. Remain applicable unless we notify you of changes in these provisions, in response to federal law.

3. If the provisions of this endorsement do NOT become applicable, any terrorism endorsement already endorsed to this policy, that addresses *certified acts of terrorism* and/or *other acts of terrorism*, will continue in effect unless we notify you of changes to that endorsement in response to federal law.

B. The following definition is added and applies under this endorsement wherever the term terrorism is shown in italics.

"Terrorism" means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:

a. Use or threat of force or violence; or

b. Commission or threat of a dangerous act; or

c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

2. When one or both of the following applies:

a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or

b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

C. The following exclusion is added:

**EXCLUSION OF TERRORISM**

We will not pay for loss or damage caused directly or indirectly by *terrorism*, including action in hindering or defending against an actual or expected incident of *terrorism*. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. **But this exclusion applies only when one or more of the following are attributed to an incident of *terrorism*:**

1. The *terrorism* is carried out by means of the dispersal or application of radioactive ma-

terial, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or

2. Radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
3. The *terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials; or
5. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the *terrorism* and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of *terrorism* which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold is exceeded.

With respect to this item C5, the immediately preceding paragraph describes the threshold used to measure the magnitude

of an incident of *terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of *terrorism*, there is no coverage under this Coverage Part.

#### D. Exception Covering Certain Fire Losses

The following exception to the Exclusion Of Terrorism applies only if indicated and as indicated in the Schedule of this endorsement.

If *terrorism* results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements that apply to those coverage forms, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

#### E. Application Of Other Exclusions

1. When the Exclusion Of Terrorism applies in accordance with the terms of C1 or C2, such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Part or Policy.
2. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss or damage which would otherwise be excluded under this Coverage Part, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

### SCHEDULE

**The Exception Covering Certain Fire Losses (Paragraph D) applies to property located in the following states, if covered under the indicated Coverage Part:**

State	Coverage Part
Illinois	Commercial Property Coverage Part Commercial Output Program - Property Coverage Form
Iowa	Commercial Property Coverage Part Commercial Output Program - Property Coverage Form
Maine	Commercial Property Coverage Part Commercial Inland Marine Coverage Part
Missouri	Commercial Property Coverage Part Commercial Inland Marine Coverage Part
Wisconsin	Commercial Property Coverage Part Commercial Inland Marine Coverage Part

**SOUTH DAKOTA CHANGES****IM-7100(10-11)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL INLAND MARINE COVERAGE PART**

1. Paragraph 2 of the Cancellation Common Policy Condition is replaced by the following:

We may cancel this policy by mailing or delivering to the First Named Insured written notice of cancellation at least 20 days before the date cancellation takes effect.

- a. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason.
- b. When this policy has been in effect for 60 days or more or if it is a renewal with us, we may not cancel unless it is based upon at least one of the following reasons:
  - (1) Nonpayment of premium;
  - (2) Discovery of fraud or material misrepresentation made by or with the knowledge of the Named Insured in obtaining the policy, continuing the policy or in presenting a claim under the policy;
  - (3) Discovery of acts or omissions on the part of the Named Insured which increase any hazard insured against;
  - (4) The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued;
  - (5) A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;
  - (6) A determination by the Director of Insurance that the continuation of the policy would jeopardize our solvency or would place us in violation of the insurance laws of this state; or
  - (7) A violation or breach of any policy terms or conditions by the insured.

2. Paragraph 5 of the Cancellation Common Policy Condition is replaced by the following:

If this policy is cancelled, we will send the First Named Insured any premium refund due. If we cancel, the refund will be computed pro rata. If the First Named Insured cancels, the refund will be computed at 90% of pro rata. The cancellation will be effective even if we have not made or offered a refund.

3. The following Condition is added and supersedes any provision to the contrary:

**NONRENEWAL**

If we decide not to renew this policy, we will mail or deliver to the First Named Insured written notice of nonrenewal not less than 60 days before:

1. The expiration date; or
2. The anniversary date if this is a continuous policy.

Any notice of nonrenewal will be mailed or delivered to the First Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. Any provision in this Coverage Part entitled Appraisal is replaced by the following:

**Appraisal**

If you and we do not agree on the amount of the loss, the actual cash value of the property or the cost to repair or replace the property, an appraisal of the loss may take place if both parties agree to the appraisal procedure.

If both parties agree to the appraisal procedure, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days after agreeing to the appraisal. The two appraisers will select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court in the state where the appraisal is pending to select an umpire.

The appraisers will determine:

- a. The amount of the loss;
- b. The actual cash value of the property; and
- c. The cost to repair or replace the property.

Each amount will be stated separately.

If the appraisers submit a written report of an agreement to us, the agreement will establish these amounts. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. A written agreement by any two of these three will establish the amounts stated above.

Each appraiser will be paid by the party selecting that appraiser. The compensation of the umpire and other expenses of the appraisal will be shared equally by you and us.

Appraisals are not binding. Any decision may be appealed to a court of competent jurisdiction.

5. Any provision in this Coverage Part entitled Suit Against Us is replaced by the following:

### Suit Against Us

No suit to recover for a loss may be brought against us unless the suit is commenced within six years after the loss. If any applicable law makes this limitation invalid, then suit must begin within the shortest period permitted by the law.

**6.** The following provision is added under Valuation:

Valued Policy Provision

- a. When this Coverage Part insures any real property in South Dakota against loss by fire, tornado or lightning and the property is wholly destroyed by fire, tornado or lightning, without criminal fault on the part of you or your assignee, the amount of the insurance written on such real property shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages, subject to the exceptions and conditions in paragraphs b through f below.
- b. The Valued Policy Provision, paragraph a above, does not apply to a fire loss which occurs less than 90 days after:
  - (1) The policy was initially issued; or
  - (2) The amount of insurance on the destroyed property was increased by 25% or more at the insured's request.

However, the valued policy provision applies if the amount of insurance was increased:

- (1) In accordance with an inflation adjustment option; or
- (2) As a consequence of upgrading coverage to a replacement cost basis, provided there is a written agreement between you and us that the policy will be written on a valued basis.

- c. Builders' Risk policies of insurance covering property in the process of being constructed shall be valued and settled according to the actual value of that portion of the construction completed at the time of the fire, tornado or lightning loss.
- d. Property in the process of being newly constructed, for the purpose of serving as a residence, shall be valued and settled according to the terms and conditions of the policy for valuation of that portion of the construction completed at the time of the fire, tornado or lightning loss.
- e. If two or more policies are written upon the same property interest and cover the fire, tornado or lightning loss, each insurer will pay only that proportion of the cost of the loss that the limit of liability under its policy bears to the total amount of insurance covering the loss.
- f. The Valued Policy Provision, paragraph a above, does not apply to any claim for total loss to any building which is insured under a blanket form or endorsement with one Limit of Insurance applicable to two or more buildings. Any claim for total loss to a building insured on such blanket basis will be settled at actual cash value, depending on the policy provisions applicable to the building.
- g. If the claim is for loss of an appurtenant or separate structure for which a specific description and *limit* are not shown in the policy, the most we will pay for such loss is either the actual cash value or the replacement cost of the structure, depending on the policy provisions that apply to that structure.

**CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

IL-7080(1-15)

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
STANDARD PROPERTY POLICY

**A. Cap On Certified Terrorism Losses**

*"Certified act of terrorism"* means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a *certified act of terrorism* include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States

or to influence the policy or affect the conduct of the United States Government by coercion.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**B. Application Of Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by any Nuclear Hazard Exclusion, War And Military Action Exclusion or other similar exclusion.

**DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT**

IL-7082(1-15)

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

**A. Disclosure Of Premium**

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown in the policy Declarations.

**B. Disclosure Of Federal Participation In Payment Of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals a percentage of that portion of the amount of such insured losses that exceeds the applicable insurer retention. The

federal share percentage is 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019; and 80% beginning on January 1, 2020. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

**C. Cap On Insurer Participation In Payment Of Terrorism Losses**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**COMMON POLICY CONDITIONS**

IL-0017F(11-98)

All Coverage Parts included in this policy are subject to the following conditions.

**A. CANCELLATION**

1. The First Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

2. We may cancel this policy by mailing or delivering to the First Named Insured written notice of cancellation at least:

a. Ten days before the effective date of cancellation if we cancel for nonpayment of premium; or

b. Thirty days before the effective date of cancellation if we cancel for any other reason.

3. We will mail or deliver our notice to the First Named Insured's last mailing address known to us.

4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

5. If this policy is cancelled, we will send the First Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the First Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

6. If notice is mailed, proof of mailing will be sufficient proof of notice.

**B. CHANGES**

This policy contains all the agreements between you and us concerning the insurance afforded. The First Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

**C. EXAMINATION OF YOUR BOOKS AND RECORDS**

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

**D. INSPECTIONS AND SURVEYS**

1. We have the right to:

a. Make inspections and surveys at any time;

b. Give you reports on the conditions we find; and

c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

a. Are safe or healthful; or

b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1 and 2 of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2 of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

**E. PREMIUMS**

The First Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and

2. Will be the payee for any return premiums we pay.

**F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.



## COMMERCIAL EXCESS LIABILITY COVERAGE PART

### ACUITY Edge Amended Declarations

First Named Insured and Address:

HULTGREN CONSTRUCTION LLC  
402 W 9TH ST  
SIOUX FALLS SD 57104

Agency Name and Number:

BOEN & ASSOCIATES, INC  
2979-AY

Policy Number: X87409

Policy Period: Effective Date: 01-20-16

Expiration Date: 01-20-17

In return for the payment of the premium and subject to  
all the terms of the policy, we agree to provide the  
insurance coverage as stated in the same.

12:01 A.M. standard time at  
your mailing address shown  
in the declarations

### COVERAGE FORMS AND ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART

Form Number	Form Title	Premium
CU-7008 (11-05)	Asbestos Exclusion .....	\$
CU-7010 (03-03)	Nuclear Energy Liability Exclusion Endorsement .....	
CU-7072 (01-15)	Conditional Exclusion of Terrorism (Relating to Disposition of Fed. Act) ..	
CU-7019 (03-03)	South Dakota Amendatory Endorsement .....	
CU-7054 (03-03)	Fungi or Bacteria Exclusion .....	
CU-7037 (05-05)	Commercial Excess Liability Coverage Form .....	
CU-7067 (03-03)	War Liability Exclusion .....	
CU-7085 (01-15)	Cap on Losses from Certified Acts of Terrorism .....	19.00
CU-7087 (01-15)	Exclusion of Punitive Damages Related to a Certified Act of Terrorism ...	
IL-7082 (01-15)	Disclosure Pursuant to Terrorism Risk Insurance Act .....	
CU-7057 (01-04)	Electronic Data Liability Exclusion .....	
<b>Advance Endorsement Premium .....</b>		<b>\$ 19.00</b>

### PREMIUM SUMMARY

Advance Premium .....	\$ 1,902.00
Advance Endorsement Premium .....	19.00
<b>Total Advance Premium .....</b>	<b>\$ 1,921.00</b>

### ADDITIONAL NAMED INSUREDS

WHO IS AN INSURED includes the following Additional Named Insureds:

NONE

Policy Number: X87409  
Effective Date: 01-20-16

**LIMITS OF INSURANCE**

General Aggregate .....	\$ 1,000,000
Products-Completed Operations Aggregate .....	1,000,000
Each Occurrence .....	1,000,000

**PREMIUM COMPUTATION**

Not Subject to Audit	
Estimated Advance Premium .....	\$ 1,902.00

**SCHEDULE OF UNDERLYING INSURANCE - AUTOMOBILE LIABILITY**

Policy Number: CA-X87409  
Name of Insurer: ACUITY, A Mutual Insurance Company  
Policy Period: 01-20-16 To 01-20-17

**Limits or Amounts of Insurance**

Bodily Injury and Property Damage Combined Single Limit (Each Accident) .....	\$ 1,000,000
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**SCHEDULE OF UNDERLYING INSURANCE - EMPLOYERS' LIABILITY**

Policy Number: WC020-0028906-2016A  
Name of Insurer: FIRST DAKOTA INDEMNITY  
Policy Period: 01-20-16 To 01-20-17

**Limits or Amounts of Insurance**

Bodily Injury by Accident (Each Accident) .....	\$ 100,000
Bodily Injury by Disease (Policy Limit) .....	500,000
Bodily Injury by Disease (Each Employee) .....	100,000

**SCHEDULE OF UNDERLYING INSURANCE - BIS-PAK**

Policy Number: CB-X87409  
Name of Insurer: ACUITY, A Mutual Insurance Company  
Policy Period: 01-20-16 To 01-20-17

**Limits or Amounts of Insurance**

Liability and Medical Expenses (Each Occurrence) .....	\$ 1,000,000
Products-Completed Operations Aggregate Limit .....	3,000,000
General Aggregate Limit (Other Than Products-Completed Operations) .....	3,000,000

**COMMERCIAL EXCESS LIABILITY COVERAGE FORM**

**Index of Policy Provisions**

	Page		Page
<b>SECTION I - COVERAGES</b> .....	1	Bankruptcy of Underlying Insurer .....	4
Insuring Agreement .....	1	Duties in the Event of Occurrence,	
Exclusions .....	1	Claim or Suit .....	4
Investigation or Settlement of Claims		Maintenance of Underlying Insurance ...	4
or Defense of Insured Against Suits .....	2	Other Insurance .....	4
Coverage Extension .....	3	Policy Period .....	5
<b>SECTION II - LIMIT OF INSURANCE</b> .....	3		
<b>SECTION III - CONDITIONS</b> .....	4		
Appeals .....	4	<b>SECTION IV - DEFINITIONS</b> .....	5

**COMMERCIAL EXCESS LIABILITY COVERAGE FORM**

This policy contains both a Products-Completed Operations Aggregate Limit and a General Aggregate Limit of Insurance. These are described in Section II - Limit of Insurance.

Other provisions in this policy restrict coverage. Read the entire policy and any *underlying insurance* carefully to determine rights, duties and what is covered and not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under any *underlying insurance*.

The words "we," "us" and "our" refer to the Company providing this insurance.

The words "this insurance" mean the liability insurance provided under this policy.

The word "insured" means any person or organization qualifying as such under any *underlying insurance*.

Other words and phrases that appear in italics have special meaning. Refer to Section IV - Definitions of this policy.

**SECTION I - COVERAGES****1. Insuring Agreement**

- a. We will pay those sums, in excess of the amount payable under the terms of any *underlying insurance*, that the insured becomes legally obligated to pay as damages because of *injury* or damage to which this insurance applies, provided that the *underlying insurance* also applies, or would apply but for the exhaustion of its applicable Limits of Insurance.

We will also pay those sums that the insured becomes legally obligated to pay as damages because of *injury* or damage to which the insurance provided under the Coverage Extension applies as set forth in paragraph 4 below.

- b. We have the right to participate in the investigation or settlement of claims or the defense of the insured against suits seeking damages because of *injury* or damage to which this insurance may apply. We have a duty to investigate or settle such claims or to defend the insured against such suits when the applicable Limit of Insurance of the *underlying insurance* has been used up by payment of judgments, settlements and any cost or expense subject to such limit.

We will have the right and duty to participate in the investigation and settlement of claims or the defense of the insured against suits seeking damages because of *injury* or damage to which the insurance provided under the Coverage Extension may apply.

This right or duty to defend is limited as set forth in paragraph 3 below.

However, we will have no duty to defend the insured against any suit seeking damages for *injury* or damage to which this insurance does not apply.

- c. The amount we will pay for damages is limited as described in Section II - Limit of Insurance.

- d. This insurance is subject to the same terms, conditions, agreements, exclusions and definitions as the *underlying insurance*, except:

- (1) We have no obligation under this insurance with respect to any claim or suit that is settled without our consent; and
- (2) With respect to any provisions to the contrary contained in this insurance.

**2. Exclusions**

The exclusions that apply to the *underlying insurance* apply to this insurance. Also, this insurance does not apply to damages because of:

- a. *Injury* or damage to premises rented to you or temporarily occupied by you with permission of the owner.
- b. Any duty to pay expenses under any medical payments coverage.
- c. Any duty to reimburse an insurer as provided by the terms of the Endorsement For Motor Carrier Policies of Insurance For Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980 or under the terms of any similar endorsement required by Federal or state statute.
- d. Any duty payable only because of the attachment of the Endorsement For Motor Carrier Policies of Insurance For Public Liability or any similar endorsement required by Federal or state statute.
- e. Any duty imposed by law under any automobile no-fault, uninsured motorist, underinsured motorist, workers' compensation, disability benefits or unemployment compensation law or any similar law.
- f. Any duty imposed by law under the following:
  - (1) Section 130, Civil Liability, of Title I (Truth in Lending Act) of the Consumer Credit Protection Act (Public Law

90-321; 82 Stat. 146 et. seq.);

- (2) Title IV (Odometer Requirements) of the Motor Vehicle Information and Cost Savings Act (Public Law 92-513; 86 Stat. 961); or
  - (3) Employee's Retirement Income Security Act (E.R.I.S.A.) of 1974 as now or hereafter amended.
- g.** *Injury* or damage to personal property in the care, custody or control of the insured.
- This exclusion does not apply to liability assumed under a sidetrack agreement.
- h.** *Injury* or damage sustained by an employee, former employee, prospective employee or their beneficiaries or legal representatives and caused by any negligent act, error or omission of the insured, or any other person for whose acts the insured is legally liable, in the administration of any employee benefit program. Administration includes giving counsel to employees, interpreting, handling of employee records, and effecting enrollment, termination or cancellation of employees.
- i.** Any obligation to pay any claim or claims made against you or any of your officers, directors or trustees, individually or collectively, by reason of a wrongful act in their respective capacities as officers, directors or trustees.
- As used in this exclusion, "wrongful act" means any actual or alleged error, misstatement or misleading statement, act or omission, or neglect or breach of duty made or committed by your directors, officers or trustees.
- j.** Any obligation arising out of an act, error or omission of an insured:

- (1) While performing the duties of an insurance agent in your garage operations; or
- (2) In your garage operations as a result of title paper preparation.

As used in this exclusion:

- (1) "Insurance agent" means a person or organization who is duly licensed as an insurance agent by the regulatory authority of the state in which the insured's principal place of business is located.
- (2) "Garage operations" means the ownership, maintenance or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations. Garage operations includes the ownership, maintenance or use of the autos indicated in Section I of the Garage Coverage Form as cov-

ered autos. Garage operations also includes all operations necessary or incidental to a garage business.

- (3) "Title paper preparation" means the preparation of official title papers for registering an auto sold by you. This includes the designation of a lienholder who holds a financial interest in the auto.
  - (4) "Auto" means a land motor vehicle, trailer or semitrailer.
- k.** Any obligation imposed due to the application of any statute permitting a customer to return an auto sold by an insured, if the auto fails to perform satisfactorily.
- As used in this exclusion, "auto" means a land motor vehicle, trailer or semitrailer.
- l.** *Injury* or damage your customer becomes legally obligated to pay which arise out of the use of your covered auto. This exclusion applies only if your business is shown in the Declarations of the *underlying insurance* as an auto dealership.

However, if your customer becomes legally obligated to pay for *injury* or damage which arise out of their use of your covered auto and if there is:

- (1) No other valid and collectible insurance (whether primary, excess or contingent) available to your customer, we will pay up to the compulsory or financial responsibility law limits where the covered auto is principally garaged.
- (2) Other valid and collectible insurance (whether primary, excess or contingent) available to the customer but it is less than the compulsory or financial responsibility law limits where the covered auto is principally garaged, we will pay only for the amount by which the compulsory or financial responsibility law limits exceed the limits of the other insurance.

### **3. Investigation or Settlement of Claims or Defense of Insured Against Suits**

- a.** When we have the duty to defend, we will pay for all *defense expense* once our duty to defend begins. We may investigate any claim or suit.

If we exercise our right to defend when there is no duty, we will pay only that *defense expense* we incur.

If we provide a defense, we may investigate any claim or suit at our discretion. We may settle such claim or suit within the Limit of Insurance available at the time of the settlement.

- b.** Our right or duty to defend ends when we

have used up the Limits of Insurance available in the payment of any judgments or settlements as provided under Section II - Limit of Insurance. This applies both to claims and suits pending at the time and those filed thereafter.

- c. When we control the investigation or settlement of a claim or the defense of the insured against a suit, we will pay for the *defense expense*. If by mutual agreement or court order the insured assumes control before the applicable Limit of Insurance available is used up, we will reimburse the insured for reasonable *defense expense*.
- d. As soon as the Limit of Insurance available is used up, you will then arrange to assume control of the investigation or settlement of all such claims or the defense of you or any other insured against such suits when our right or duty to investigate, settle or defend them ends.
- e. We will assist the insured in the transfer of control of the investigation or settlement of claims or the defense of the insured against suits under c or d above. Until such transfer is completed, we will take on behalf of any insured those steps that we think proper:
  - (1) To avoid a default in any claim or suit; or
  - (2) To the continued investigation or settle-

ment of a claim or defense of the insured against a suit.

You agree that if we take such steps:

- (1) We do not waive or give up any of our rights under this insurance; and
  - (2) You will reimburse us for any *defense expense* that arises out of such steps if the applicable Limit of Insurance available has been used up.
- f. Any payment for *defense expense* will not reduce the Limits of Insurance.

#### 4. Coverage Extension

- a. The terms of this policy are extended as follows:

If *underlying insurance* provides coverage for the use of watercraft you do not own, in addition to watercraft ashore on premises you own or rent, the coverage provided by this policy is extended to cover any watercraft you do not own that is:

- (1) Less than 75 feet long; and
- (2) Not being used to carry persons or property for a charge;

even if these nonowned watercraft are not insured in the *underlying insurance*.

- b. We will only pay for damages up to the limits of insurance.

## SECTION II - LIMIT OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below define the most we will pay under the terms of this insurance regardless of the number of:
  - a. Insureds;
  - b. Claims made or suits brought;
  - c. Persons or organizations making claims or bringing suits.
- 2. The General Aggregate Limit is the most we will pay for all damages under Section I - Coverages, other than damages arising out of:
  - a. The *products-completed operations hazard*; or
  - b. The ownership, operation, maintenance, use, loading or unloading, or entrustment to others, of an auto.

The General Aggregate Limit applies separately to:

- a. Each location owned by or rented to you. A location is a premises involving the same or connecting lots, or a premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad; and

- b. Each of your projects away from a location owned by or rented to you.

Each payment we make for such damages reduces by the amount of the payment, the General Aggregate Limit. This reduced limit will then be the Limit of Insurance available for further damages of these kinds.

- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Section I - Coverages because of damages arising out of the *products-completed operations hazard*. Each payment we make for such damages reduces, by the amount of the payment, the Products-Completed Operations Aggregate Limit. This reduced limit will then be the Limit of Insurance available for further damages of these kinds.
- 4. Subject to 2 and 3 above, or with respect to *injury* or damage arising out of the ownership, operation, maintenance, use, loading or unloading, or entrustment to others of an auto, the Each Occurrence Limit is the most we will pay for the sum of damages under Section I - Coverages because of all *injury* and damage arising out of any one *occurrence*.
- 5. The limits of this policy apply separately to

each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an addi-

tional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Insurance.

### SECTION III - CONDITIONS

We have no duty to provide coverage under this policy unless you and any other involved insured have fully complied with the Conditions contained in this policy and those contained in any *underlying insurance*.

If any of the following conditions are contrary to Conditions contained in the *underlying insurance*, the provisions contained in this policy apply.

#### 1. Appeals

In the event the *underlying insurer* elects not to appeal a judgment in excess of the limits of the *underlying insurance*, we may elect to make such appeal. If we so elect, we shall be liable, in addition to the applicable Limit of Insurance for all *defense expenses* we incur.

#### 2. Bankruptcy of Underlying Insurer

In the event of bankruptcy or insolvency of any *underlying insurer*, this policy shall not replace such *underlying insurance*. This policy applies as if the *underlying insurance* was valid and collectible.

#### 3. Duties in the Event of Occurrence, Claim or Suit

a. You must see to it that we are notified as soon as practicable of an *occurrence* or offense which may result in a claim. To the extent possible notice should include:

- (1) How, when and where the *occurrence* or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any *injury* or damage arising out of the *occurrence* or offense.

b. If a claim or suit is received by any insured you must:

- (1) Immediately record the specifics of the claim or suit and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or a suit;
- (2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or the defense of the insured against the suit;

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of *injury* or damage to which this insurance may also apply; and

(5) Notify us immediately of any judgment or settlement of any claim or suit brought against any insured.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### 4. Maintenance of Underlying Insurance

a. You agree to maintain the *underlying insurance* in full force and effect during the term of this policy. You agree to inform us within 10 days of any replacement of that *underlying insurance* by the same or another company. If there is any change in the replacement *underlying policy* in hazard, policy limits or coverage, including any terms, conditions and endorsements, we will only be liable under this insurance to the same extent as if there had been no change in, or replacement of, *underlying insurance*.

b. In the event that any *underlying insurance* is cancelled or not renewed and not replaced, you must notify us within 10 days. We will not be liable under this insurance for more than we would have been liable if that *underlying insurance* had not terminated if you do not request cancellation of this policy effective the same date that the *underlying insurance* was cancelled.

c. Reduction or exhaustion of the *aggregate limit* of any *underlying insurance* by payments for judgments or settlements will not be a failure to maintain *underlying insurance* in full force and effect.

d. No statement contained in this Condition limits our right to cancel or not renew this policy.

#### 5. Other Insurance

This insurance is excess over any other valid and collectible insurance whether primary, excess, contingent or any other basis, except oth-

er insurance written specifically to be excess over this insurance.

## 6. Policy Period

This insurance will respond to *injury* or damage

that occurs, or arises from an offense committed, during the policy period of this insurance shown in the Declarations.

## SECTION IV - DEFINITIONS

1. "*Aggregate limit*" means the maximum amount stated in the policy for which the insurer will be liable, regardless of the number of covered claims.
2. "*Defense expense*" means payments allocated to the investigation or settlement of a specific claim or the defense of the insured against a specific suit, including:
  - a. Attorney fees and all other litigation expenses.
  - b. The cost of bonds to appeal a judgment or award in our defense of the insured against any suit.
  - c. Up to \$250 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which bodily injury liability coverage provided by *underlying insurance* applies.
  - d. The cost of bonds to release attachments. This is only for bond amounts within the Limit of Insurance available.
  - e. Reasonable expenses incurred by the insured at our request to assist us in the investigation or settlement of the claim or the defense of the insured against the suit. This includes actual loss of earnings up to \$100 a day because of time off from work.
  - f. Cost taxed against the insured in the suit.
  - g. Interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the amount available for the judgment under the provisions of Section II - Limits of Insurance.

*Defense expense* does not include:

  - a. Salaries and expenses of our employees or the insured's employees, other than:
    - (1) That portion of our employed attorneys' fees, salaries and expenses allocated to a specific claim or suit; and
    - (2) The expenses described in e above.
  - b. Fees and expenses of independent adjusters we hire.
3. "*Injury*" means bodily injury, property damage, personal injury or advertising injury as defined in the *underlying insurance*.
4. "*Occurrence*" means:
  - a. With respect to bodily injury to persons other than your employees and property damage, an accident, including continuous or repeated exposure to substantially the same general harmful conditions;
  - b. With respect to bodily injury to your employees arising out of and in the course of their employment by you, the accident or disease which causes the bodily injury; and
  - c. With respect to offenses committed by the insured resulting in personal injury or advertising injury, all such injury sustained by any one person or organization.
5. "*Occurrence limit*" means any specific limit, other than an *aggregate limit*, applicable to any *underlying insurance*, regardless of whether such limit is subject to an *aggregate limit* in the *underlying policy*.
6. "*Products-completed operations hazard*":
  - a. Includes all *injury* occurring away from premises you own or rent and arising out of *your product* or *your work* except:
    - (1) Personal injury or advertising injury as defined in the *underlying insurance*;
    - (2) Products that are still in your physical possession; or
    - (3) Work that has not yet been completed or abandoned. However, *your work* will be deemed completed at the earliest of the following times:
      - (a) When all of the work called for in your contract has been completed;
      - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
      - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
  - b. Does not include *injury* arising out of:
    - (1) The transportation of property, unless the *injury* or damage arises out of a condition in or on a vehicle not owned

or operated by you, and that condition was created by the loading or unloading of that vehicle by any insured;

- (2) The existence of tools, uninstalled equipment, or abandoned or unused materials; or
- (3) Products or operations for which the classification in the General Liability *underlying policy* or in our General Liability manual or rules includes products or completed operations.

7. "*Underlying insurance*" means the liability insurance coverage provided under policies shown in the Schedule of Underlying Insurance in the Declarations, for the limits and periods indicated. It includes any policies issued to replace those policies during the term of this insurance, provided that you have notified us within 10 days of the replacement, and the replacement policies provide:

- a. At least the same policy limits;
- b. The same hazards insured against, except as modified by general program revisions; and
- c. The same coverage, including all terms, conditions and endorsements.

8. "*Underlying insurer*" means any insurer who issues a policy of *underlying insurance*.

9. "*Underlying policy*" means a policy providing *underlying insurance*.

10. "*Your product*" means:

- a. Any goods or products other than real property, manufactured, sold, handled, distrib-

uted or disposed of by:

- (1) You;
- (2) Others trading under your name; or
- (3) A person or organization whose business or assets you have acquired; and

b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

*Your product* includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of *your product*; and
- b. The providing of or failure to provide warnings or instructions.

*Your product* does not include vending machines or other property rented to or located for the use of others but not sold.

11. "*Your work*" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

*Your work* includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of *your work*; and
- b. The providing of or failure to provide warnings or instructions.

**CONDITIONAL EXCLUSION OF TERRORISM (RELATING TO DISPOSITION OF FEDERAL TERRORISM RISK INSURANCE ACT)**

CU-7072(1-15)

This endorsement modifies insurance provided under the following:

**COMMERCIAL EXCESS LIABILITY COVERAGE FORM****A. Applicability Of The Provisions Of This Endorsement**

1. The provisions of this endorsement will become applicable commencing on the date when any one or more of the following first occurs. But if your policy (meaning the policy period in which this endorsement applies) begins after such date, then the provisions of this endorsement become applicable on the date your policy begins.

a. The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act, has terminated with respect to the type of insurance provided under this Coverage Form; or

b. A renewal, extension or replacement of the Program has become effective without a requirement to make terrorism coverage available to you and with revisions that:

(1) Increase our statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all certified terrorism losses we must pay in a calendar year, before the federal government shares in subsequent payment of certified terrorism losses.); or

(2) Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or

(3) Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.

2. If the provisions of this endorsement become applicable, such provisions:

a. Supersede any terrorism endorsement already endorsed to this policy that addresses *certified acts of terrorism and/or other acts of terrorism*, but only with respect to an incident(s) of terrorism (however defined) which results in injury or damage that occurs on or after the date

when the provisions of this endorsement become applicable (for claims made policies, such an endorsement is superseded only with respect to an incident of terrorism (however defined) that results in a claim for injury or damage first being made on or after the date when the provisions of this endorsement become applicable); and

b. Remain applicable unless we notify you of changes in these provisions, in response to federal law.

3. If the provisions of this endorsement do NOT become applicable, any terrorism endorsement already endorsed to this policy, that addresses *certified acts of terrorism and/or other acts of terrorism*, will continue in effect unless we notify you of changes to that endorsement in response to federal law.

B. The following definitions are added and apply under this endorsement wherever the term terrorism, or the phrase any injury or damage, are shown in italics:

1. "*Terrorism*" means activities against persons, organizations or property of any nature:

a. That involve the following or preparation for the following:

(1) Use or threat of force or violence; or

(2) Commission or threat of a dangerous act; or

(3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

b. When one or both of the following applies:

(1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or

(2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

2. "*Any injury or damage*" means any injury or damage covered under any Coverage Form or underlying insurance to which this en-

dorsement is applicable, and includes but is not limited to *bodily injury, property damage, personal and advertising injury, injury or environmental damage* as may be defined in any applicable Coverage Form or underlying insurance.

**C. The following exclusion is added:**

**EXCLUSION OF TERRORISM**

We will not pay for *any injury or damage* caused directly or indirectly by *terrorism*, including action in hindering or defending against an actual or expected incident of *terrorism*. *Any injury or damage* is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. **But this exclusion applies only when one or more of the following are attributed to an incident of *terrorism*:**

1. The *terrorism* is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
2. Radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
3. The *terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials; or
5. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons

and entities affected by the *terrorism* and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or

6. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
  - a. Physical injury that involves a substantial risk of death; or
  - b. Protracted and obvious physical disfigurement; or
  - c. Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of *terrorism* which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraphs C5 or C6 are exceeded.

With respect to this Exclusion, Paragraphs C5 and C6 describe the threshold used to measure the magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of *terrorism*, there is no coverage under this Coverage Form.

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Form.

**ASBESTOS EXCLUSION**

**CU-7008(11-05)**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following exclusion is added:

**Asbestos**

1. This insurance does not apply to *injury*, including but not limited to, physical or mental injury, mental anguish or shock, sickness, disease, occupational disease, disability or death, or damage to property arising out of activities re-

lated to, but not limited to, manufacture, mining, storage, distribution, installation, sale, use, exposure to, service, testing for, repair, containment or removal of asbestos, asbestos fibers, asbestos dust, or products containing asbestos.

2. The following definition applies:

*"Injury"* means bodily injury or property damage as defined in the *underlying insurance*.

## NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

CU-7010(3-03)

This endorsement modifies insurance provided under the following:

## COMMERCIAL EXCESS LIABILITY COVERAGE FORM

## 1. This insurance does not apply to:

## a. Any claim or accident:

- (1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the *hazardous properties of nuclear material* and with respect to which:
  - (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954 or any law amendatory thereof; or
  - (b) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America or any agency thereof, with any person or organization.

b. Any claim or accident resulting from the *hazardous properties of nuclear material*, if:

- (1) The *nuclear material*:
  - (a) Is at any *nuclear facility* owned by, or operated by or on behalf of, an insured; or
  - (b) Has been discharged or dispersed therefrom;
- (2) The *nuclear material* is contained in *spent fuel* or *waste* at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- (3) The claim or accident arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any *nuclear facility*, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to *property damage* to such *nuclear facility* and any property thereat.

## 2. As used in this endorsement:

- a. "*Hazardous properties*" include radioactive, toxic or explosive properties.
- b. "*Nuclear material*" means *source material*, *special nuclear material* or *by-product material*.
- c. "*Source material*," "*special nuclear material*" and "*by-product material*" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- d. "*Spent fuel*" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a *nuclear reactor*.
- e. "*Waste*" means any waste material:
  - (1) Containing *by-products material* other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its *source material* content; and
  - (2) Resulting from the operation by any person or organization of any *nuclear facility* included under the first two paragraphs of the definition of *nuclear facility*.
- f. "*Nuclear facility*" means:
  - (1) Any *nuclear reactor*;
  - (2) Any equipment or device designed or used for:
    - (a) Separating the isotopes of uranium or plutonium;
    - (b) Processing or utilizing *spent fuel*; or
    - (c) Handling, processing or packaging *waste*;
  - (3) Any equipment or device used for the processing, fabricating or alloying of *special nuclear material* if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of *waste*;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

- g. "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

- h. "Property damage" includes all forms of radioactive contamination of property.

## **SOUTH DAKOTA AMENDATORY ENDORSEMENT**

**CU-7019(3-03)**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL EXCESS LIABILITY COVERAGE FORM**

1. The following exclusion is added to item 2, Exclusions of Section I - Coverages:

This insurance does not apply to punitive or exemplary damages.

2. The following is added to Section IV - Conditions:

#### **Cancellation**

- a. The First Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the First Named Insured written notice of cancellation at least 20 days before the date cancellation takes effect.
  - (1) When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason.
  - (2) When this policy has been in effect for 60 days or more or if it is a renewal with us, we may not cancel unless it is based upon at least one of the following reasons:
    - (a) Nonpayment of premium;
    - (b) Discovery of fraud or material misrepresentation made by or with the knowledge of the Named Insured in obtaining the policy, continuing the policy or in presenting a claim under the policy;
    - (c) Discovery of acts or omissions on the part of the Named Insured which increase any hazard insured against;
    - (d) The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued;
    - (e) A violation of any local fire, health,

safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;

- (f) A determination by the Director of Insurance that the continuation of the policy would jeopardize our solvency or would place us in violation of the insurance laws of this state; or

- (g) A violation or breach of any policy terms or conditions by the insured.

- c. We will mail or deliver our notice to the First Named Insured's last mailing address known to us.

- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.

- e. If this policy is cancelled, we will send the First Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the First Named Insured cancels, the refund will be computed at 90% of pro rata. The cancellation will be effective even if we have not made or offered a refund.

- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### **Nonrenewal**

If we decide not to renew this policy, we will mail or deliver to the First Named Insured written notice of nonrenewal not less than 60 days before:

- a. The expiration date; or
- b. The anniversary date if this is a continuous policy.

Any notice of nonrenewal will be mailed or delivered to the First Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

**CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

**CU-7085(1-15)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL EXCESS LIABILITY COVERAGE FORM**

- A.** If aggregate insured losses attributable to terrorist acts certified under the federal Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

*"Certified act of terrorism"* means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act

for a *certified act of terrorism* include the following:

- 1.** The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
  - 2.** The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- B.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Form.

**EXCLUSION OF PUNITIVE DAMAGES RELATED TO A CERTIFIED ACT OF TERRORISM**

**CU-7087(1-15)**

This endorsement modifies insurance provided under the following:

**COMMERCIAL EXCESS LIABILITY COVERAGE FORM**

**A.** The following exclusion is added:

This insurance does not apply to:

**TERRORISM PUNITIVE DAMAGES**

Damages arising, directly or indirectly, out of a *certified act of terrorism* that are awarded as punitive damages.

**B.** The following definition is added:

*"Certified act of terrorism"* means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a *certified act of terrorism* include the following:

- 1.** The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
  - 2.** The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- C.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Form.

**DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT**

IL-7082(1-15)

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

**A. Disclosure Of Premium**

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown in the policy Declarations.

**B. Disclosure Of Federal Participation In Payment Of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals a percentage of that portion of the amount of such insured losses that exceeds the applicable insurer retention. The

federal share percentage is 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019; and 80% beginning on January 1, 2020. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

**C. Cap On Insurer Participation In Payment Of Terrorism Losses**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**ELECTRONIC DATA LIABILITY EXCLUSION****CU-7057(1-04)**

This endorsement modifies insurance provided under the following:

## COMMERCIAL EXCESS LIABILITY COVERAGE FORM

1. The following exclusion is added to item 2 Exclusions under Section I - Coverages:

This insurance does not apply to *property damage* because of loss of *electronic data*.

2. The following definition is added to Section IV - Definitions:

"*Electronic data*" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

3. For the purposes of the exclusion listed in item 1 above, the following definition is added:

"*Property Damage*" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the *occurrence* that caused it; or
- c. Loss of *electronic data*. Loss of *electronic data* means loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate such data, resulting from physical injury to tangible property. All such loss of *electronic data* shall be deemed to occur at the time of the *occurrence* that caused it.

For the purposes of this exclusion, *electronic data* is not tangible property.

**FUNGI OR BACTERIA EXCLUSION****CU-7054(3-03)**

The endorsement modifies insurance provided under the following:

## COMMERCIAL EXCESS LIABILITY COVERAGE FORM

1. The following exclusion is added to Paragraph 2, Exclusions of Section I - Coverages:

- a. *Injury* or damage which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any *fungi* or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

- b. Any loss, cost or expenses arising out of

the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, *fungi* or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any *fungi* or bacteria that are, are on, or are contained in, a good or product intended for consumption.

2. The following definition is added to the Definitions Section:

"*Fungi*" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

**WAR LIABILITY EXCLUSION****CU-7067(3-03)**

This endorsement modifies insurance provided under the following:

## COMMERCIAL EXCESS LIABILITY COVERAGE FORM

The following exclusion is added:

This insurance does not apply to:

*Injury* or damage, however caused, arising, directly or indirectly, out of:

1. War, including undeclared or civil war; or

2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.



## BIS-PAK COVERAGE PART

### Amended Declarations

First Named Insured and Address:

HULTGREN CONSTRUCTION LLC  
402 W 9TH ST  
SIOUX FALLS SD 57104

Agency Name and Number:

BOEN & ASSOCIATES, INC  
2979-AY

Policy Number: X87409

Policy Period: Effective Date: 01-20-16

Expiration Date: 01-20-17

In return for the payment of the premium and subject to  
all the terms of the policy, we agree to provide the  
insurance coverage as stated in the same.

12:01 A.M. standard time at  
your mailing address shown  
in the declarations

### COVERAGE FORMS AND ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART

Form Number	Form Title	Premium
CB-0006 (12-12)	Bis-Pak Business Liability and Medical Expenses Coverage Form . . . . .	\$
CB-0009 (09-04)	Bis-Pak Common Policy Conditions . . . . .	
CB-1416 (01-10)	Snow Plow Products-Completed Operations Hazard Coverage . . . . .	
CB-7068 (08-06)	Voluntary Property Damage - Bis-Pak . . . . .	271.00
CB-7221 (04-10)	Property in the Course of Construction - South Dakota . . . . .	3,357.00
CB-7332 (05-13)	Additional Insured - Owners, Lessees or Contractors - Automatic Status . . . . .	710.00
CB-1504 (05-14)	Exclusion-Access of Confidential or Personal Info/Data with Limited BI . . . . .	
CB-0002 (09-14)	Deluxe Bis-Pak Property Coverage Form . . . . .	
CB-0417 (07-02)	Employment-Related Practices Exclusion . . . . .	
CB-0564 (01-15)	Conditional Exclusion of Terrorism (Relating to Disposition of Federal Act) . . . . .	
CB-0577 (04-10)	Fungi or Bacteria Exclusion (Liability) . . . . .	
CB-7079 (10-11)	South Dakota Changes . . . . .	
IL-7012 (03-14)	Asbestos Exclusion . . . . .	
CB-7298 (01-15)	Exclusion of Punitive Damages Related to a Certified Act of Terrorism . . . . .	
CB-7299 (01-15)	Cap on Losses from Certified Acts of Terrorism - Liability . . . . .	190.00
IL-7082 (01-15)	Disclosure Pursuant to Terrorism Risk Insurance Act . . . . .	
CB-7105 (06-13)	Contractor's Equipment . . . . .	2,766.00
CB-7268 (11-14)	ACUITY Enhancements - Liability Coverages . . . . .	199.00
CB-7023 (09-04)	Contractors Endorsement - Accounts Receivable . . . . .	
CB-7237 (08-12)	Exclusion - Habitational Exterior Finish Systems . . . . .	
CB-0703 (01-97)	Business Liability Coverage-Prop Damage Liability Deductible(Per Claim Basis) . . . . .	
<b>Advance Endorsement Premium . . . . .</b>		<b>\$ 7,493.00</b>

Policy Number: X87409  
Effective Date: 01-20-16

**PREMIUM SUMMARY**

Advance Premium .....	\$ 18,935.00
Advance Endorsement Premium .....	7,493.00
<b>Total Advance Premium .....</b>	<b>\$ 26,428.00</b>

The Total Advance Premium shown above is based on the exposures you anticipated at the time this coverage part began. We will audit this coverage part in accordance with the Bis-Pak Liability and Medical Expenses General Condition entitled Premium Audit - Business Liability at the close of the audit period.

**PROPERTY COVERAGES PROVIDED**

Form: None - Contractors' Plan

**DESCRIPTION OF PREMISES**

Premises Number	Building Number	Construction, Occupancy and Location
001	001	CARPENTRY - NOC 4920A W 14TH ST SIOUX FALLS SD

**LIABILITY COVERAGES PROVIDED**

Coverage Item	Limit of Insurance
Liability and Medical Expenses (Each Occurrence) .....	\$ 1,000,000
Medical Expenses (Any One Person) .....	10,000
Damage to Premises Rented to You .....	250,000
Products-Completed Operations Aggregate Limit .....	3,000,000
General Aggregate Limit (Other Than Products-Completed Operations) .....	3,000,000

Premises Number	Building Number	Classification Description	Class Code	Premium Basis <sup>1</sup>	Rate
001	001	Carpentry - Interior	91341	If Any PA	26.62
001	001	Contractors-Subcontracted Work	91585	217,555 TC	5.38
001	001	Carpentry - NOC	91342	149,948 PA	30.49
001	001	Driveway Parking Area or Sidewalk Paving	92215	71,028 PA	15.64
001	001	Painting - Interior - Buildings or Structures	98305	182,070 PA	11.98
001	001	Plumbing - Residential or Domestic	98483	45,180 PA	70.86

Page 3

Policy Number: X87409  
Effective Date: 01-20-16

Premises Number	Building Number	Classification Description	Class Code	Premium Basis <sup>1</sup>	Rate
001	001	Carpentry - Residential, Not Exceeding Three Stories	91340	144,245 PA	45.09
001	001	Electrical Work - Within Buildings	92478	20,613 PA	9.53

<sup>1</sup> PA = Payroll - Rate Applies Per \$1,000 of Payroll

TC = Total Cost - Rate Applies Per \$1,000 of Total Cost

**OPTIONAL COVERAGES PROVIDED**

Coverage Item	Limit of Insurance
Scheduled Contractors' Equipment - Actual Cash Value .....	See CB-7105
Unscheduled Contractors' Equipment - Actual Cash Value .....	See CB-7105
Contractors Rented Tools - Actual Cash Value .....	See CB-7105
Voluntary Property Damage .....	See CB-7068
Property in the Course of Construction .....	See CB-7221
ACUITY Enhancements - Liability Coverages .....	See CB-7268

Coverage Item	Premises Number	Building Number	Limit of Insurance
Accounts Receivable .....	001	001	\$ 1,000

**BIS-PAK PLAN**

Contractors

**AUDIT PERIOD**

Annual

**ADDITIONAL NAMED INSURED**

WHO IS AN INSURED includes the following Additional Named Insureds:

NONE

**FIRST NAMED INSURED IS:**

LTD LIAB COMPANY (LLC)

**BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM**

**Index of Policy Provisions**

Page

**LIABILITY AND MEDICAL EXPENSES COVERAGES** ..... 1-3

**EXCLUSIONS** ..... 3-9

**WHO IS AN INSURED** .....10-11

**LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE** ..... 11

**LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS** .....11-12

**LIABILITY AND MEDICAL EXPENSES DEFINITIONS** .....12-15

**BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we," "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under the Who Is An Insured Section of this policy.

Other words and phrases that appear in italics have special meaning. Refer to the Liability and Medical Expenses Definitions Section.

**LIABILITY AND MEDICAL EXPENSES COVERAGES****1. Business Liability**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of *bodily injury*, *property damage* or *personal and advertising injury* to which this insurance applies. We will have the right and duty to defend the insured against any *suit* seeking those damages. However, we will have no duty to defend the insured against any *suit* seeking damages for *bodily injury*, *property damage* or *personal and advertising injury* to which this insurance does not apply. We may at our discretion investigate any *occurrence* or offense and settle any claim or *suit* that may result. But:

- (1) The amount we will pay for damages is limited as described in the Liability and Medical Expenses Limits of Insurance Section; and
- (2) Our right and duty to defend ends when we have used up the applicable Limit of Insurance in the payment of judgments, settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

b. This insurance applies:

- (1) To *bodily injury* or *property damage* only if:
  - (a) The *bodily injury* or *property damage* is caused by an *occurrence* that takes place in the *coverage territory*; and
  - (b) The *bodily injury* or *property damage* occurs during the policy period.
  - (c) Prior to the policy period, no insured listed under item 1 of Who Is An Insured and no *employee* authorized by you to give or receive notice of an *occurrence* or claim, knew that the *bodily injury* or *prop-*

*erty damage* had occurred, in whole or in part. If such a listed insured or authorized *employee* knew, prior to the policy period, that the *bodily injury* or *property damage* occurred, then any continuation, change or resumption of such *bodily injury* or *property damage* during or after the policy period will be deemed to have been known before the policy period.

- (2) To *personal and advertising injury* caused by an offense arising out of your business, but only if the offense was committed in the *coverage territory* during the policy period.
- c. *Bodily injury* or *property damage* which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under item 1 of Who Is An Insured or any *employee* authorized by you to give or receive notice of an *occurrence* or claim, includes any continuation, change or resumption of *bodily injury* or *property damage* after the end of the policy period.
- d. *Bodily injury* or *property damage* will be deemed to have been known to have occurred at the earliest time when any insured listed under item 1 of Who Is An Insured or any *employee* authorized by you to give or receive notice of an *occurrence* or claim:
  - (1) Reports all, or any part, of the *bodily injury* or *property damage* to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the *bodily injury* or *property damage*; or
  - (3) Becomes aware by any other means that *bodily injury* or *property damage* has occurred or has begun to occur.
- e. Damages because of *bodily injury* include damages claimed by any person or organization for care, loss of services or death resulting at any time from the *bodily injury*.

**f. Coverage Extension - Supplementary Payments**

- (1) We will pay, with respect to any claim we investigate or settle, or any *suit* against an insured we defend:
  - (a) All expenses we incur.
  - (b) Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for *bodily injury* applies. We do not have to furnish these bonds.
  - (c) The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.
  - (d) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or *suit*, including actual loss of earnings up to \$250 a day because of time off from work.
  - (e) All costs taxed against the insured in the *suit*.
  - (f) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - (g) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the limit of liability.

- (2) If we defend an insured against a *suit* and an indemnitee of the insured is also named as a party to the *suit*, we will defend that indemnitee if all of the following conditions are met:
  - (a) The *suit* against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an *insured contract*;
  - (b) This insurance applies to such liability assumed by the insured;
  - (c) The obligation to defend, or the cost of the defense of, that indem-

nitee has also been assumed by the insured in the same *insured contract*;

- (d) The allegations in the *suit* and the information we know about the *occurrence* are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;
- (e) The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such *suit* and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- (f) The indemnitee:
  - (i) Agrees in writing to:
    - i. Cooperate with us in the investigation, settlement or defense of the *suit*;
    - ii. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the *suit*;
    - iii. Notify any other insurer whose coverage is available to the indemnitee; and
    - iv. Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (ii) Provides us with written authorization to:
    - i. Obtain records and other information related to the *suit*; and
    - ii. Conduct and control the defense of the indemnitee in such *suit*.

- (3) So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph 1b(2) of Exclusions, such payments will not be deemed to be damages for *bodily injury* and *property damage* and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys'

fees and necessary litigation expenses as Supplementary Payments ends when:

- (a) We have used up the applicable Limit of Insurance in the payment of judgments or settlements; or
- (b) The conditions set forth above, or the terms of the agreement described in paragraph (2)(f) above, are no longer met.

## 2. Medical Expenses

- a. We will pay medical expenses as described below for *bodily injury* caused by an accident:

- (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
- provided that:

- (1) The accident takes place in the *coverage territory* and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the Limit of Insurance. We will pay reasonable expenses for:

- (1) First aid at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

## EXCLUSIONS

### 1. Applicable to Business Liability Coverage

#### This Insurance does not apply to:

- a. Expected or Intended Injury

*Bodily injury* or *property damage* expected or intended from the standpoint of the insured. This exclusion does not apply to *bodily injury* resulting from the use of reasonable force to protect persons or property.

- b. Contractual Liability

*Bodily injury* or *property damage* for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an *insured contract*, provided the *bodily injury* or *property damage* occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an *insured contract*, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of *bodily injury* or *property damage*, provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same *insured contract*; and
  - (b) Such attorney fees and litigation expenses are for defense of that

party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

- c. Liquor Liability

*Bodily injury* or *property damage* for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing of alcoholic beverages.

- d. Workers' Compensation and Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

- e. Employers' Liability

*Bodily injury* to:

- (1) An employee of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or

- (2) The spouse, child, parent, brother or sister of that employee as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an *insured contract*.

**f. Pollution**

- (1) *Bodily injury or property damage* arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants*:

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

- (i) *Bodily injury* if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) *Bodily injury or property damage* for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

- (iii) *Bodily injury or property damage* arising out of heat, smoke or fumes from a *hostile fire*;

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or

- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the *pollutants* are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) *Bodily injury or property damage* arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of *mobile equipment* or its parts if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

- (ii) *Bodily injury or property damage* sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

- (iii) *Bodily injury or property damage* arising out of heat, smoke or fumes from a *hostile fire*.

- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing op-

erations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, *pollutants*.

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand or order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of *pollutants*; or
- (b) Claim or *suit* by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of *pollutants*.

However, this paragraph does not apply to liability for damages because of *property damage* that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement or such claim or *suit* by or on behalf of a governmental authority.

**g. Aircraft, Auto or Watercraft**

*Bodily injury or property damage* arising out of the ownership, maintenance, use or entrustment to others of any aircraft, *auto* or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and *loading or unloading*.

This exclusion applies even if the claims allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by an insured, if the *occurrence* which caused the *bodily injury or property damage* involved the ownership, maintenance, use or entrustment to others of any aircraft, *auto* or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) Watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 feet long; and
  - (b) Not being used to carry persons or property for a charge.
- (3) Parking an *auto* on, or on the ways next to premises you own or rent, provided the *auto* is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any *insured*

*contract* for the ownership, maintenance or use of aircraft or watercraft; or

(5) *Bodily injury or property damage* arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of *mobile equipment* if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged; or
- (b) The operation of any of the following machinery or equipment:
  - (i) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (ii) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**h. Mobile Equipment**

*Bodily injury or property damage* arising out of:

- (1) The transportation of *mobile equipment* by an *auto* owned or operated by or rented or loaned to any insured; or
- (2) The use of *mobile equipment* in, or while in practice for, or while being prepared for, any prearranged racing, speed or stunting activity.

**i. War**

*Bodily injury, property damage or personal and advertising injury*, however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.

**j. Professional Services**

*Bodily injury, property damage or personal and advertising injury* due to rendering or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting, advertising, counseling, consulting services or funeral home services;
  - (2) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
  - (3) Supervisory, inspection or engineering services;
  - (4) Medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction;
  - (5) Any health or therapeutic service, treatment, advice or instruction including but not limited to physiotherapy, massage, chiropractic, or the operation or use of tanning booths or equipment;
  - (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
  - (7) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
  - (8) Body piercing services, barber and beauty shops;
  - (9) Services in the practice of pharmacy, but this exclusion does not apply to an insured whose operations include those of a retail druggist or drugstore.
  - (10) Services in connection with the selling, licensing, franchising or furnishing of your computer software including electronic data processing programs, designs, specifications, manuals and instructions.
  - (11) Data processing services rendered by, or that should have been rendered by:
    - (a) The insured; or
    - (b) Any person or organization:
      - (i) For whose acts, errors or omissions the insured is legally responsible; or
      - (ii) From whom the insured assumed liability by reason of a contract or agreement.
  - (12) The rendering of, or failure to render, electronic data processing, computer consulting or computer programming services, advice or instruction by:
    - (a) The insured; or
    - (b) Any person or organization:
      - (i) For whose acts, errors or omissions the insured is legally responsible; or
      - (ii) From whom the insured assumed liability by reason of a contract or agreement.
- k. Damage to Property**  
*Property damage to:*
- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
  - (2) Premises you sell, give away or abandon, if the *property damage* arises out of any part of those premises;
  - (3) Property loaned to you;
  - (4) Personal property in the care, custody or control of any insured;
  - (5) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the *property damage* arises out of those operations; or
  - (6) That particular part of any property that must be restored, repaired or replaced because *your work* was incorrectly performed on it.
- Paragraphs (1), (3) and (4) of this exclusion do not apply to *property damage* (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate Limit of Insurance applies to Damage To Premises Rented To You as described in paragraph 3 under the Liability And Medical Expenses Limits Of Insurance Section.
- Paragraph (2) of this exclusion does not apply if the premises are *your work* and were never occupied, rented or held for rental by you.
- Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.
- Paragraph (6) of this exclusion does not apply to *property damage* included in the *products-completed operations hazard*.
- l. Damage to Your Product**  
*Property damage to your product* arising out of it or any part of it.
- m. Damage to Your Work**  
*Property damage to your work* arising out of it or any part of it and included in the *products-completed operations hazard*.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**n. Damage to Impaired Property or Property Not Physically Injured**

*Property damage to impaired property* or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in *your product* or *your work*; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to *your product* or *your work* after it has been put to its intended use.

**o. Recall of Products, Work or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) *Your product*;
- (2) *Your work*; or
- (3) *Impaired property*;

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**p. Personal and Advertising Injury**

*Personal and advertising injury*:

- (1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict *personal and advertising injury*;
- (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

- (5) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your *advertisement*;
- (6) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your *advertisement*;
- (7) Arising out of the wrong description of the price of goods, products or services stated in your *advertisement*;
- (8) Committed by an insured whose business is:
  - (a) Advertising, broadcasting, publishing or telecasting;
  - (b) Designing or determining content of websites for others; or
  - (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to paragraphs a, b and c of Definition 14 *Personal and advertising injury* under Liability And Medical Expenses Definitions.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, by itself, is not considered the business of advertising, broadcasting, publishing or telecasting.

- (9) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of *pollutants* at any time.
- (10) With respect to any loss, cost or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way responding to, or assessing the effects of *pollutants*.
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of *pollutants*.
- (11) Arising out of an electronic chatroom or bulletin board the insured hosts, owns or over which the insured exercises control.
- (12) Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply

to infringement, in your *advertisement*, of copyright, trade dress or slogan.

- (13) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatags, or any other similar tactics to mislead another's potential customers.

**q. Suntanning Operations**

*Bodily injury, personal and advertising injury or property damage* arising out of the ownership, operation or use of any suntanning booth or suntanning device.

**r. Lead**

*Bodily injury, property damage, personal and advertising injury* arising out of the actual, alleged or threatened ingestion, inhalation, absorption, exposure or presence of lead in any form or from any source.

Coverage also does not apply to any loss, cost, expense, fine or penalty arising out of any:

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, dispose of or in any way respond to or assess the effects of lead in any form; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, disposing of or in any way responding to or assessing the effects of lead in any form.

**s. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy discs, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**t. Criminal Acts**

*Personal and advertising injury* arising out of a criminal act committed by or at the direction of the insured.

**u. Distribution of Material in Violation of Statutes**

*Bodily injury, property damage, or personal and advertising injury* arising directly or indirectly out of any action or omission that

violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c, d, e, f, g, h, i, k, l, m, n, o and r do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Damage To Premises Rented To You Limit of Insurance applies to this coverage as described in the Limits of Insurance Section of this Coverage Form.

**2. Applicable to Medical Expenses Coverage**

We will not pay expenses for *bodily injury*:

- a. To any insured, except *volunteer workers*.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an *employee* of any insured, if benefits for the *bodily injury* are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. To a person injured while practicing, instructing or participating in any physical exercises or games, sports or taking part in athletic contests.
- f. Included within the *products-completed operations hazard*.
- g. Excluded under Business Liability Coverage.

**3. Applicable to Both Business Liability Coverage and Medical Expenses Coverage - Nuclear Energy Liability Exclusion**

This insurance does not apply:

- a. Under Business Liability Coverage, to *bodily injury* or *property damage*:
  - (1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its

- Limit of Liability; or
- (2) Resulting from the *hazardous properties* of *nuclear material* and with respect to which:
    - (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
    - (b) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America or any agency thereof, with any person or organization.
  - b. Under Medical Expenses Coverage, to expenses incurred with respect to *bodily injury* resulting from the *hazardous properties* of *nuclear material* and arising out of the operation of a *nuclear facility* by any person or organization.
  - c. Under Business Liability Coverage, to *bodily injury* or *property damage* resulting from the *hazardous properties* of *nuclear material*, if:
    - (1) The *nuclear material*:
      - (a) Is at any *nuclear facility* owned by or operated by or on behalf of an insured; or
      - (b) Has been discharged or dispersed therefrom;
    - (2) The *nuclear material* is contained in *spent fuel* or *waste* at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
    - (3) The *bodily injury* or *property damage* arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any *nuclear facility*, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to *property damage* to such *nuclear facility* and any property thereat.
  - d. As used in this exclusion:
 

"Byproduct material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear facility" means:

    - (1) Any *nuclear reactor*;

- (2) Any equipment or device designed or used for:
  - (a) Separating the isotopes of uranium or plutonium;
  - (b) Processing or utilizing *spent fuel*; or
  - (c) Handling, processing or packaging *waste*;
- (3) Any equipment or device used for the processing, fabricating or alloying of *special nuclear material* if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof or more than 250 grams of uranium 235;
- (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of *waste*;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear material" means *source material*, *special nuclear material* or *byproduct material*;

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Property damage" includes all forms of radioactive contamination of property;

"Source material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Special nuclear material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a *nuclear reactor*;

"Waste" means any waste material:

- (1) Containing *byproduct material* other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its *source material* content; and
- (2) Resulting from the operation by any person or organization of any *nuclear facility* included under paragraphs (1) and (2) of the definition of *nuclear facility*.

## WHO IS AN INSURED

1. If you are designated in the Declarations as:
    - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
    - b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
    - c. A limited liability company, you are insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
    - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your *executive officers* and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
    - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
  2. Each of the following is also an insured:
    - a. Your *volunteer workers* only while performing duties related to the conduct of your business, or your *employees* other than either your *executive officers* (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these *employees* or *volunteer workers* are insureds for:
      - (1) *Bodily injury or personal and advertising injury*:
        - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a *co-employee* while in the course of his or her employment or performing duties related to the conduct of your business, or to your other *volunteer workers* while performing duties related to the conduct of your business;
        - (b) To the spouse, child, parent, brother or sister of that *co-employee* as a consequence of paragraph (1)(a) above;
        - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b); or
        - (d) Arising out of his or her providing or failing to provide professional health care services. However, if you have *employees* who are pharmacists in your retail druggist or drugstore operation, they are insured with respect to their providing or failing to provide professional health care services; or
    - (2) *Property damage* to property:
      - (a) Owned, occupied or used by; or
      - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;  
you, any of your *employees*, *volunteer workers*, any partner or member (if you are a partnership or joint venture) or any member (if you are a limited liability company).
  - b. Any person (other than your *employee* or *volunteer worker*) or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
3. Any organization you newly acquire or form, other than a partnership, limited liability company or joint venture and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage does not apply to *bodily injury* or *property damage* that occurred before you acquired or formed the organization; and
  - c. Coverage does not apply to *personal and*

*advertising injury* arising out of an offense committed before you acquired or formed the organization.

to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

No person or organization is an insured with respect

## LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or *suits* brought; or
  - c. Persons or organizations making claims or bringing *suits*.
2. The most we will pay for the sum of all damages because of all:
  - a. *Bodily injury, property damage* and medical expenses arising out of any one *occurrence*; and
  - b. *Personal and advertising injury* sustained by any one person or organization;

is the Liability and Medical Expenses Limit shown in the Declarations. But the most we will pay for all medical expenses because of *bodily injury* sustained by any one person is the Medical Expenses Limit shown in the Declarations.
3. The most we will pay under Business Liability Coverage for damages because of *property damage* to a premises while rented to you or in the case of a fire while rented to you or temporarily occupied by you with permission of the owner is the applicable Damage To Premises Rented To You Limit shown for that premises in the Declarations. For a premises temporarily occupied by you, the applicable limit will be the Damage To Premises Rented To You Limit shown in the Declarations.
4. **Aggregate Limits**
  - a. The Products-Completed Operations Aggregate Limit shown in the Declarations is the

most we will pay for injury or damage under the *products-completed operations hazard* arising from all *occurrences* during the policy period.

- b. The General Aggregate Limit shown in the Declarations is the most we will pay for the sum of all damages because of all:
  - (1) *Bodily injury, property damage* and medical expenses arising from all *occurrences* during the policy year. This limit applies separately to:
    - (a) Each location owned by or rented to you. A location is a premises involving the same or connecting lots, or a premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad; and
    - (b) Each of your projects away from a location owned by or rented to you; or
  - (2) *Personal and advertising injury* arising out of all offenses committed during the policy period.

The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

## LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

We have no duty to provide coverage under this Coverage Part unless you and any other involved insured have fully complied with the Conditions contained in this Coverage Part.

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

### 2. Duties in the Event of Occurrence, Offense, Claim or Suit

- a. You must see to it that we are notified as soon as practicable of an *occurrence* or an

offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the *occurrence* or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the *occurrence* or offense.
- b. If a claim is made or *suit* is brought against any insured, you must:
    - (1) Immediately record the specifics of the

claim or *suit* and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or *suit* as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or *suit*;

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the *suit*; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense, other than for first aid, without our consent.

### 3. Legal Action Against Us

No person or organization has a right under this policy:

a. To join us as a party or otherwise bring us into a *suit* asking for damages from an insured; or

b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final

judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Separation of Insureds

Except with respect to the Limits of Insurance and any rights or duties specifically assigned in this policy to the First Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or *suit* is brought.

### 5. Premium Audit - Business Liability

a. We will compute all premiums for this Coverage Form in accordance with our rules and rates.

b. Premium shown in this Coverage Form as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. If a premium payment is due, we will send notice to the First Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the First Named Insured.

c. The First Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

## LIABILITY AND MEDICAL EXPENSES DEFINITIONS

1. "*Advertisement*" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding websites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "*Auto*" means:

a. A land motor vehicle, trailer or semitrailer de-

signed for travel on public roads, including any attached machinery or equipment; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where it is licensed or principally garaged.

However, *auto* does not include *mobile equipment*.

3. "*Bodily injury*" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "*Coverage territory*" means:

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in paragraph a above; or
- c. All parts of the world if:

The injury or damage arises out of:

- (1) Goods or products made or sold by you in the territory described in a above; or
- (2) The activities of a person whose home is in the territory described in a above, but is away for a short time on your business; and
- (3) "*Personal and advertising injury*" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a *suit* on the merits in the territory described in a above or in a settlement we agree to.

- 5. "*Employee*" includes a *leased worker*. *Employee* does not include a *temporary worker*.
- 6. "*Executive officer*" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
- 7. "*Hostile fire*" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 8. "*Impaired property*" means tangible property, other than *your product* or *your work*, that cannot be used or is less useful because:
  - a. It incorporates *your product* or *your work* that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;
 if such property can be restored to use by:
  - a. The repair, replacement, adjustment or removal of *your product* or *your work*; or
  - b. Your fulfilling the terms of the contract or agreement.
- 9. "*Insured contract*" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an *insured contract*.
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to

indemnify a municipality, except in connection with work for a municipality;

- e. An elevator maintenance agreement; or
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for *bodily injury* or *property damage* to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f does not include that part of any contract or agreement;

- (1) That indemnifies a railroad for *bodily injury* or *property damage* arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection or engineering services.

10. "*Leased worker*" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. *Leased worker* does not include a *temporary worker*.

11. "*Loading or unloading*" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or *auto*;
- b. While it is in or on an aircraft, watercraft or *auto*; or
- c. While it is being moved from an aircraft, watercraft or *auto* to the place where it is finally delivered.

But *loading or unloading* does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or *auto*.

12. "*Mobile equipment*" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers.
  - e. Vehicles not described in a, b, c or d above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers.
  - f. Vehicles not described in a, b, c or d above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not *mobile equipment* but will be considered *autos*:

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning.
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, *mobile equipment* does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance or motor vehicle registration law where they are licensed or principally garaged. Land vehicles subject to a compulsory

or financial responsibility law or other motor vehicle insurance law are considered *autos*.

- 13. "*Occurrence*" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 14. "*Personal and advertising injury*" means injury, including consequential *bodily injury*, arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your *advertisement*; or
  - g. Infringing upon another's copyright, trade dress or slogan in your *advertisement*.
- 15. "*Pollutants*" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 16. "*Products-completed operations hazard*":
  - a. Includes all *bodily injury* and *property damage* occurring away from premises you own or rent and arising out of *your product* or *your work* except:
    - (1) Products that are still in your physical possession; or
    - (2) Work that has not yet been completed or abandoned. However, *your work* will be deemed completed at the earliest of the following times:
      - (a) When all of the work called for in your contract has been completed.
      - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
      - (c) When that part of the work done at the job site has been put to its intended use by any other person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement,

but which is otherwise complete, will be treated as completed.

The *bodily injury* or *property damage* must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of *your product* for consumption on premises you own or rent.

**b.** Does not include *bodily injury* or *property damage* arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the *loading or unloading* of that vehicle by any insured; or

(2) The existence of tools, uninstalled equipment or abandoned or unused materials.

**17. "Property damage" means:**

**a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

**b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the *occurrence* that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**18. "Suit" means a civil proceeding in which damages because of *bodily injury*, *property damage*, or *personal and advertising injury* to which this insurance applies are alleged. *Suit* includes:**

**a.** An arbitration proceeding in which such damages are claimed and to which the *insured* must submit or does submit with our consent; or

**b.** Any other alternative dispute resolution proceeding in which such damages are

claimed and to which the *insured* submits with our consent.

**19. "Temporary worker" means a person who is furnished to you to substitute for a permanent *employee* on leave or to meet seasonal or short-term workload conditions.**

**20. "Volunteer worker" means a person who is not your *employee*, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.**

**21. "Your product" means:**

**a.** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(1) You;

(2) Others trading under your name; or

(3) A person or organization whose business or assets you have acquired; and

**b.** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

*Your product* includes:

**a.** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of *your product*; and

**b.** The providing of or failure to provide warnings or instructions.

*Your product* does not include vending machines or other property rented to or located for the use of others but not sold.

**22. "Your work" means:**

**a.** Work or operations performed by you or on your behalf; and

**b.** Materials, parts or equipment furnished in connection with such work or operations.

*Your work* includes:

**a.** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of *your work*; and

**b.** The providing of or failure to provide warnings or instructions.

**DELUXE BIS-PAK PROPERTY COVERAGE FORM****Index of Policy Provisions**

	Page		Page
<b>PROPERTY COVERAGES</b> .....	1-11	<b>PROPERTY OPTIONAL COVERAGES</b> .....	17-19
Covered Property .....	1	Outdoor Signs .....	17-18
Property Not Covered .....	1-2	Employee Dishonesty .....	18-19
Covered Causes of Loss .....	2	<b>PROPERTY DEDUCTIBLES</b> .....	19
Limitations .....	2	<b>PROPERTY GENERAL CONDITIONS</b> .....	19-20
Additional Coverages .....	2-11	Control of Property .....	19
<b>PROPERTY EXTENSIONS OF COVERAGE</b> ..	11-13	Mortgageholders .....	19-20
Newly Acquired or Constructed Property .	11	No Benefit to Bailee .....	20
Personal Effects and Property of Others .	11-12	Policy Period, Coverage Territory .....	20
Property Off-Premises .....	12	<b>PROPERTY LOSS CONDITIONS</b> .....	20-23
Property in Transit .....	12	Abandonment .....	20
Outdoor Property .....	12	Appraisal .....	20
Valuable Papers and Records .....	12	Duties in the Event of Loss or Damage .	20-21
Accounts Receivable .....	12-13	Legal Action Against Us .....	21
Money and Securities .....	13	Loss Payment and Valuation .....	21-22
<b>PROPERTY EXCLUSIONS</b> .....	13-17	Recovered Property .....	22
<b>PROPERTY LIMITS OF INSURANCE</b> .....	17	Resumption of Operations .....	22
Building Limit - Automatic Increase .....	17	Vacancy .....	23
Business Personal Property Limit -		<b>PROPERTY DEFINITIONS</b> .....	23-24
Seasonal Increase .....	17		

**DELUXE BIS-PAK PROPERTY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declara-

tions. The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in italics have special meaning. Refer to the Property Definitions Section.

**PROPERTY COVERAGES**

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

**1. Covered Property**

Covered Property includes Buildings as described under item a below, Business Personal Property as described under item b below, or both, depending on whether a Limit of Insurance is shown in the Declarations for that type of property. Regardless of whether coverage is shown in the Declarations for Buildings, Business Personal Property, or both, there is no coverage for property described under item 2, Property Not Covered.

**a. Buildings**, meaning the buildings and structures at the premises described in the Declarations, including:

- (1) Completed additions;
- (2) Garages, storage buildings, appurtenant structures usual to your occupancy;
- (3) Fixtures, including outdoor fixtures;
- (4) Permanently installed:
  - (a) Machinery; and
  - (b) Equipment;
- (5) Your personal property in apartments, rooms or common areas furnished by you as landlord;
- (6) Personal property owned by you that is used to maintain or service the buildings, structures or the premises, including:
  - (a) Fire extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering.
- (7) If not covered by other insurance:
  - (a) Additions under construction, alterations and repairs to the buildings or structures; and
  - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises,

used for making additions, alterations or repairs to the buildings or structures.

**b. Business Personal Property** located in or on the buildings at the described premises or in the open (or in a vehicle) within 100 feet of the described premises, including:

- (1) Property you own that is used in your business;
- (2) Property of others that is in your care, custody or control, except as otherwise provided in Loss Payment and Valuation Property Loss Condition 5g(3)(b);
- (3) Tenant's improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove;
- (4) Leased personal property which you have a contractual responsibility to insure, unless otherwise provided for under paragraph 1b(2); and
- (5) Exterior building glass, if you are a tenant and no Limit of Insurance is shown in the Declarations for Building property. The glass must be owned by you or in your care, custody or control.

**2. Property Not Covered**

Covered Property does not include:

- a.** Aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration;
- b.** *Money or securities*, except as provided in the:
  - (1) Money and Securities Coverage Extension; or
  - (2) Employee Dishonesty Optional Coverage.
- c.** Contraband or property in the course of illegal transportation or trade;
- d.** Land (including land on which the property is located), water, growing crops or lawns;

- e. Outdoor fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than *stock* of trees, shrubs or plants), all except as provided in the:

- (1) Outdoor Property Coverage Extension; or
- (2) Outdoor Signs Optional Coverage;

- f. Watercraft (including motors, equipment and accessories) while afloat;

- g. Accounts, bills, food stamps, other evidences of debt, accounts receivable or *valuable papers and records*; except as otherwise provided in this policy;

- h. *Computer(s)* which are permanently installed or designed to be permanently installed in any aircraft, watercraft, motortruck or other vehicle subject to motor vehicle registration. This paragraph does not apply to *computer(s)* while held as *stock*;

- i. *Electronic data*, except as provided under Additional Coverages - Electronic Data. This paragraph i does not apply to your *stock* of prepackaged software.

### 3. Covered Causes of Loss

Risks of Direct Physical Loss unless the loss is:

- a. Excluded in Property Exclusions; or
- b. Limited in paragraph 4, Limitations; that follow.

### 4. Limitations

- a. We will not pay for loss of or damage to:
  - (1) Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - (2) Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
  - (3) Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property. This limitation does not apply to the Extension of Coverage for Money and Securities.

- (4) Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

- (5) The interior of any building or structure or the property inside any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- (a) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which rain, snow, sleet, ice, sand or dust enters; or

- (b) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

- b. We will not pay for loss of or damage to fragile articles such as glassware, statuary, marble, chinaware and porcelain, if broken, unless caused by the *specified causes of loss* or building glass breakage. This restriction does not apply to:

- (1) Glass that is part of the exterior or interior of a building or structure;
- (2) Containers of property held for sale; or
- (3) Photographic or scientific instrument lenses.

- c. For loss or damage by theft, the following types of property are covered only up to the limits shown:

- (1) \$2,500 for furs, fur garments and garments trimmed with fur.
- (2) \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
- (3) \$2,500 for patterns, dies, molds and forms.

### 5. Additional Coverages

#### a. Debris Removal

- (1) Subject to paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris removal does not apply to costs to:
  - (a) Extract *pollutants* from land or water; or

- (b) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in paragraph (4) below, the following provisions apply:
- (a) The most that we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
- (b) Subject to paragraph (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.
- (4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
- (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if paragraphs (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.

(5) Examples

**Example #1**

Limit of Insurance	\$90,000
Amount of Deductible	\$500
Amount of Loss	\$50,000
Amount of Loss Payable	\$49,500
	(\$50,000 - \$500)
Debris Removal Expense	\$10,000
Debris Removal Expense Payable	\$10,000
	(\$10,000 is 20% of \$50,000)

The debris removal expense is less than 25% of the sum of the loss payable plus

the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of paragraph (3).

**Example #2**

Limit of Insurance	\$90,000
Amount of Deductible	\$500
Amount of Loss	\$80,000
Amount of Loss Payable	\$79,500
	(\$80,000 - \$500)
Debris Removal Expense	\$30,000
Debris Removal Expense Payable	
Basic Amount	\$10,500
Additional Amount	\$10,000

The basic amount payable for debris removal expense under the terms of paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000; capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

**b. Pollutant Clean Up and Removal**

We will pay your expense to extract *pollutants* from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the *pollutants* is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the exis-

tence, concentration or effects of *pollutants*. But we will pay for testing which is performed in the course of extracting the *pollutants* from the land or water.

The most we will pay for each location under this Additional Coverage is \$10,000 for the sum of all such expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

**c. Preservation of Property**

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss of or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

We will not pay for any loss or damage under this Additional Coverage if the Covered Property was moved from the described premises to preserve it from loss or damage by a cause of loss that is not a Covered Cause of Loss.

**d. Fire Department Service Charge**

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$2,500, unless a different limit is shown in the Declarations, for your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

**e. Collapse**

- (1) With respect to buildings:

- (a) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;
- (b) A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;
- (c) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building; and
- (d) A building that is standing or any part of a building that is standing is not considered to be in a state of

collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

- (2) We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building insured under this policy, or that contains Covered Property insured under this policy, if the collapse is caused by one or more of the following:

- (a) The *specified cause of loss* or breakage of building glass, all only as insured against in this policy;
- (b) Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- (c) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- (d) Weight of people or personal property;
- (e) Weight of rain that collects on a roof; or
- (f) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in e(2)(a) through e(2)(e), we will pay for the loss or damage even if use of defective material or methods in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in paragraphs e(1)(a) through e(1)(d) do not limit the coverage otherwise provided under this Additional Coverage for the causes of loss listed in paragraphs e(2)(a), e(2)(d) and e(2)(e).

- (3) With respect to the following property:

- (a) Awnings;
- (b) Gutters and downspouts;
- (c) Yard fixtures;
- (d) Outdoor swimming pools;
- (e) Piers, wharves and docks;
- (f) Beach or diving platforms or appurtenances;
- (g) Retaining walls; and

(h) Walks, roadways and other paved surfaces;

if the collapse is caused by a cause of loss listed in e(2)(b) through e(2)(f), we will pay for loss or damage to that property only if such loss or damage is a direct result of the collapse of a building insured under this policy and the property is Covered Property under this policy.

(4) If personal property abruptly falls down or caves in and such collapse is not the result of collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- (a) The collapse was caused by a cause of loss listed in paragraphs (2)(a) through (2)(f) of this Additional Coverage;
- (b) The personal property which collapses is inside a building; and
- (c) The property which collapses is not of a kind listed in paragraph (3) above, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this paragraph (4) does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

Collapse of personal property does not mean cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

(5) This Additional Coverage, Collapse, will not increase the Limits Of Insurance provided in this policy.

**f. Water, Other Liquids, Powder or Molten Material Damage**

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

We will not pay the cost to repair any defect that caused the loss or damage, but we will pay the cost to repair or replace damaged parts or fire extinguishing equipment if the damage:

- (1) Results in discharge of any substance from an automatic fire protection system; or
- (2) Is directly caused by freezing.

**g. Business Income and Extra Expense**

(1) We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your *operations* during the *period of restoration*. The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- (a) The portion of the building which you rent, lease or occupy; and
- (b) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

(2) Business income means the:

- (a) Net income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and
- (b) Continuing normal operating expenses incurred, including payroll.

(3) We will pay necessary Extra Expense you incur during the *period of restoration* that you would not have incurred if there had been no direct physical loss or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which

the described premises are located, your premises means:

- (a) The portion of the building which you rent, lease or occupy; and
  - (b) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.
- (4) Extra Expense means expense incurred:
- (a) To avoid or minimize the suspension of business and to continue *operations*:
    - (i) At the described premises; or
    - (ii) At replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary locations.
  - (b) To minimize the suspension of business if you cannot continue *operations*.
  - (c) To:
    - (i) Repair or replace any property; or
    - (ii) Research, replace or restore the lost information on damaged *valuable papers and records*;

to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage.
- (5) We will only pay for Loss of Business Income or Extra Expense that you sustain during the *period of restoration* and that occurs within 12 consecutive months after the date of direct physical loss or damage. Items (1) through (5) of this Additional Coverage are not subject to the Limits of Insurance.
- (6) Extended Business Income. If the necessary suspension of your *operations* produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:
- (a) Begins on the date property, except finished stock, is actually repaired, rebuilt or replaced and *operations* are resumed; and
  - (b) Ends on the earlier of:
    - (i) The date you could restore your *operations*, with reasonable speed, to the level which would generate the Business

Income amount that would have existed if no direct physical loss or damage had occurred; or

- (ii) 30 consecutive days after the date determined in (a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

- (7) With respect to the coverage provided in this Additional Coverage, suspension means:

- (a) The partial slowdown or complete cessation of your business activities; or
- (b) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

- (8) This Additional Coverage is not subject to the Limits of Insurance.

#### **h. Civil Authority**

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

The coverage for Business Income will begin 24 hours after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins.

The coverage for necessary Extra Expense will begin immediately after the time of that action and ends:

- (1) Three consecutive weeks after the time of that action; or
- (2) When your Business Income coverage ends;

whichever is later.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverage also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance.

**i. Money Orders and Counterfeit Money**

We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, *money* or services:

- (1) Money orders issued by any post office, express company or bank that are not paid upon presentation; or
- (2) *Counterfeit money* that is acquired during the regular course of business.

The most we will pay for any loss under this Additional Coverage is \$1,000.

**j. Forgery and Alteration**

- (1) We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in *money*, that you or your agent has issued, or that was issued by someone who impersonates you or your agent.
- (2) If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in *money*, on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.
- (3) For the purpose of this coverage, check includes a substitute check as defined in the Check Clearing for the 21st Century Act, and will be treated the same as the original it replaced.
- (4) The most we will pay for any loss, including legal expenses, under this Additional Coverage is \$2,500, unless a higher Limit of Insurance is shown in the Declarations.

**k. Increased Cost of Construction**

- (1) This Additional Coverage applies only to buildings insured on a replacement cost basis.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in k(3) through k(9) of this Additional Coverage.
- (3) The ordinance or law referred to in k(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements

at the described premises, and is in force at the time of loss.

- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
  - (a) You are required to comply with before the loss, even when the building was undamaged; and
  - (b) You failed to comply with.
- (5) Under this Additional Coverage, we will not pay for:
  - (a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by *pollutants* or due to the presence, growth, proliferation, spread or any activity of *fungi*, wet or dry rot or bacteria; or
  - (b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of *pollutants*, *fungi*, wet or dry rot or bacteria.
- (6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form is \$10,000. If a damaged building(s) is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for each damaged building, is \$10,000.  
The amount payable under this Additional Coverage is additional insurance.
- (7) With respect to this Additional Coverage:
  - (a) We will not pay for the Increased Cost of Construction:
    - (i) Until the property is actually repaired or replaced, at the same or another premises; and
    - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.
  - (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another

premises, the most we will pay for the Increased Cost of Construction is the increased cost of construction at the same premises.

- (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction is the increased cost of construction at the new premises.
- (8) This Additional Coverage is not subject to the terms of the Ordinance or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- (9) The costs addressed in the Loss Payment and Valuation Property Loss Condition in this Coverage Form do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in k(6) of this Additional Coverage, is not subject to such limitation.

#### **I. Business Income From Dependent Properties**

- (1) We will pay for the actual loss of Business Income you sustain due to physical loss or damage at the premises of a dependent property caused by or resulting from any Covered Cause of Loss.

However, this Additional Coverage does not apply when the only loss to dependent property is loss or damage to *electronic data*, including destruction or corruption of *electronic data*. If the dependent property sustains loss or damage to *electronic data* and other property, coverage under this Additional Coverage will not continue once the other property is repaired, rebuilt or replaced.

The most we will pay under this Additional Coverage is \$5,000 unless a higher Limit of Insurance is indicated in the Declarations.

- (2) We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume *operations*, in whole or in part, by using any other available:
  - (a) Source of materials; or
  - (b) Outlet for your products.
- (3) If you do not resume *operations*, or do not resume *operations* as quickly as possible, we will pay based on the length of time it would have taken to resume *operations* as quickly as possible.

- (4) Dependent property means property owned by others whom you depend on to:

- (a) Deliver materials or services to you, or to others for your account. But services does not mean water, communication or power supply services;
- (b) Accept your products or services;
- (c) Manufacture your products for delivery to your customers under contract for sale; or
- (d) Attract customers to your business.

The dependent property must be located in the coverage territory of this policy.

- (5) The coverage period for Business Income under this Additional Coverage:

- (a) Begins 72 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the dependent property; and
- (b) Ends on the date when the property at the premises of the dependent property should be repaired, rebuilt or replaced with reasonable speed and similar quality.

- (6) The Business Income coverage period, as stated in paragraph (5), does not include any increased period required due to the enforcement of any ordinance or law that:

- (a) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (b) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of *pollutants*.

The expiration date of this policy will not reduce the Business Income coverage period.

- (7) The definition of Business Income contained in the Business Income Additional Coverage also applies to this Business Income From Dependent Properties Additional Coverage.

#### **m. Glass Expenses**

- (1) We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- (2) We will pay for expenses incurred to remove or replace obstructions when

repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

**n. Fire Extinguisher Systems Recharge Expense**

- (1) We will pay:
  - (a) The cost of recharging or replacing, whichever is less, your fire extinguishers and fire extinguishing systems (including hydrostatic testing if needed) if they are discharged on or within 100 feet of the described premises; and
  - (b) For loss or damage to Covered Property if such loss or damage is the result of an accidental discharge of chemicals from a fire extinguisher or a fire extinguishing system.
- (2) No coverage will apply if the fire extinguishing system is discharged during installation or testing.
- (3) The most we will pay under this Additional Coverage is \$5,000 in any one occurrence.

**o. Water Backup of Sewers or Drains - Computers**

- (1) We will pay for loss or damage to *computer(s)* and *electronic media and records* caused by or resulting from water that backs up, or overflows from a sewer, drain or sump.
- (2) Property Exclusions item g(3) does not apply to this Additional Coverage.

**p. Electronic Data**

- (1) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore *electronic data* which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that *electronic data* is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the *electronic data* was stored, with blank media of substantially identical type.
- (2) The Covered Causes of Loss applicable to Business Personal Property include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including *electronic data*) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including *electronic data*)

by any employee, including a temporary or leased employee, or by an entity retained by you, or for you, to inspect, design, install, modify, maintain, repair or replace that system.

- (3) The most we will pay under this Additional Coverage - Electronic Data for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved, is \$10,000, unless a higher Limit of Insurance is shown in the Declarations. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in, but not after, that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

**q. Interruption of Computer Operations**

- (1) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a suspension of *operations* caused by an interruption in computer operations due to destruction or corruption of *electronic data* due to a Covered Cause of Loss.
- (2) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
  - (a) Coverage under this Additional Coverage - Interruption of Computer Operations is limited to the *specified causes of loss* and Collapse.
  - (b) If the Deluxe Bis-Pak Property Coverage Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage.
  - (c) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including *electronic data*) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including

*electronic data*) by any employee, including a temporary or leased employee, or by an entity retained by you, or for you, to inspect, design, install, modify, maintain, repair or replace that system.

- (3) The most we will pay under this Additional Coverage - Interruption of Computer Operations for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved, is \$10,000, unless a higher Limit of Insurance is shown in the Declarations. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (4) This Additional Coverage - Interruption of Computer Operations does not apply to loss sustained or expense incurred after the end of the *period of restoration* even if the amount of insurance stated in (3) above has not been exhausted.
- (5) Coverage for Business Income does not apply when a suspension of *operations* is caused by destruction or corruption of *electronic data*, or any loss or damage to *electronic data*, except as provided under paragraphs (1) through (4) of this Additional Coverage.
- (6) Coverage for Extra Expense does not apply when action is taken to avoid or minimize a suspension of *operations* caused by destruction or corruption of *electronic data*, or any loss or damage to *electronic data*, except as provided under paragraphs (1) through (4) of this Additional Coverage.

**r. Limited Coverage for *Fungi*, Wet Rot, Dry Rot and Bacteria**

- (1) The coverage described in paragraphs r(2) and r(6) only applies when the *fungi*, wet or dry rot or bacteria are the result of one or more of the following causes that occur during the policy period and only if all reasonable means were used to save and preserve the

property from further damage at the time of and after that occurrence.

- (a) A *specified cause of loss* other than fire or lightning; or
  - (b) Flood, if the Flood Damage Endorsement applies to the affected premises.
- (2) We will pay for loss or damage by *fungi*, wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
    - (a) Direct physical loss or damage to Covered Property caused by *fungi*, wet or dry rot or bacteria, including the cost or removal of the *fungi*, wet or dry rot or bacteria;
    - (b) The cost to tear out and replace any part of the building or other property as needed to gain access to the *fungi*, wet or dry rot or bacteria; and
    - (c) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that *fungi*, wet or dry rot or bacteria are present.
  - (3) The coverage described under this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of *specified causes of loss* (other than fire or lightning) and flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in *fungi*, wet or dry rot or bacteria, we will not pay more than the total of \$15,000 even if the *fungi*, wet or dry rot or bacteria continue to be present or active, or recur, in a later policy period.
  - (4) The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by *fungi*, wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by *fungi*, wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent

that *fungi*, wet or dry rot or bacteria cause an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

- (5) The terms of this Limited Coverage do not increase or reduce the coverage provided under the Water Damage, Other Liquids, Powder or Molten Material Damage or Collapse Additional Coverages.
- (6) The following applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the suspension of *operations* satisfies all the terms and conditions of the applicable Business Income and/or Extra Expense Additional Coverage.
  - (a) If the loss which resulted in *fungi*, wet or dry rot or bacteria does not in itself necessitate a suspension of *operations*, but such suspension is necessary due to loss or damage

to property caused by *fungi*, wet or dry rot or bacteria, then our payment under the Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.

- (b) If a covered suspension of *operations* was caused by loss or damage other than *fungi*, wet or dry rot or bacteria, but remediation of *fungi*, wet or dry rot or bacteria prolongs the *period of restoration*, we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the *period of restoration*), but such coverage is limited to 30 days. The days need not be consecutive.

## PROPERTY EXTENSIONS OF COVERAGE

In addition to the Limits of Insurance, you may extend the insurance provided by this policy as provided below.

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

### 1. Newly Acquired or Constructed Property

#### a. Buildings

You may extend the insurance that applies to Buildings to apply to:

- (1) Your new buildings or new additions, while being built on the described premises; and
- (2) Buildings you acquire at locations, other than the described premises, intended for:
  - (a) Similar use as the building described in the Declarations; or
  - (b) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$500,000 for each building.

#### b. Business Personal Property

If this policy covers Business Personal Property, you may extend that insurance to apply to:

- (1) Business Personal Property, including such property that you newly acquire, at any location you acquire;
- (2) Business Personal Property, including

such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or

- (3) Business Personal Property that you newly acquire, located at the described premises.

This Extension does not apply to personal property that you temporarily acquire in the course of installing or performing work on such property or your wholesale activities.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

#### c. Period Of Coverage

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (1) This policy expires;
- (2) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

### 2. Personal Effects and Property of Others

- a. You may extend the insurance that applies

to Business Personal Property to apply to:

- (1) Your personal effects meaning personal property owned by you, your officers, your partners or *members*, your *managers* or your employees. This Extension does not apply to loss or damage by theft or to tools or equipment used in your business.
  - (2) Personal property in your care, custody or control belonging to other than you, your officers, your partners or *members*, your *managers* or your employees.
- b. The most we will pay for loss or damage under this Extension is \$5,000 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

### 3. Property Off-Premises

- a. You may extend the insurance provided by this policy to apply to your Covered Property, other than *money* and *securities*, *valuable papers and records* or accounts receivable, while it is in the course of transit or temporarily at a premises you do not own, lease or operate. The most we will pay for loss or damage under this Extension is \$10,000. This Extension does not apply to Covered Property in or on a vehicle.
- b. However, under this Extension, we will pay for loss or damage to *computer(s)* up to the Business Personal Property Limit shown in the Declarations.

### 4. Property in Transit

You may extend the insurance that applies to Business Personal Property to apply to your personal property in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.

The most we will pay for loss or damage under this Extension is \$10,000. However, under this Extension, we will pay for loss or damage to *computer(s)* up to the Business Personal Property Limit shown in the Declarations.

### 5. Outdoor Property

- a. You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants (other than *stock* of trees, shrubs or plants), including debris removal expense. Loss or damage must be caused by or result from any of the following causes of loss:
  - (1) Fire;

- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

- b. The most we will pay for loss or damage under this Extension is \$5,000, but not more than \$500 for any one tree, shrub or plant.

### 6. Valuable Papers and Records

- a. You may extend the insurance that applies to Business Personal Property to apply to direct physical loss or damage to *valuable papers and records* that you own, or that are in your care, custody or control, caused by or resulting from a Covered Cause of Loss. This Coverage Extension includes the cost to research, replace or restore lost information on *valuable papers and records* for which duplicates do not exist.

- b. This Coverage Extension does not apply to:
  - (1) Property held as samples or for delivery after sale; and
  - (2) Property in storage away from the premises shown in the Declarations.

- c. The most we will pay under this Coverage Extension for loss or damage to *valuable papers and records* in any one occurrence at the described premises is \$10,000 unless a higher Limit of Insurance for *Valuable Papers and Records* is shown in the Declarations.

For *valuable papers and records* not at the described premises, the most we will pay is \$5,000.

- d. Loss or damage to *valuable papers and records* will be valued at the cost of restoration or replacement of the lost or damaged information. To the extent that the contents of the *valuable papers and records* are not restored, the *valuable papers and records* will be valued at the cost of replacement with blank materials of substantially identical type.

- e. Property Exclusions does not apply to this Coverage Extension except for:

- (1) 1c, Governmental Action;
- (2) 1d, Nuclear Hazard;
- (3) 1f, War and Military Action;
- (4) 2f, Dishonesty;
- (5) 2g, False Pretense;
- (6) Paragraph 2m(2), Errors or Omissions; and
- (7) 3.

### 7. Accounts Receivable

- a. You may extend the insurance that applies to Business Personal Property to apply to accounts receivable. We will pay:

- (1) All amounts due from your customers that you are unable to collect;
- (2) Interest charges on any loan required to offset amounts you are unable to collect pending our payments of these amounts;
- (3) Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and
- (4) Other reasonable expenses that you incur to re-establish your records of accounts receivable;

that result from direct physical loss or damage by any Covered Cause of Loss to your records of accounts receivable.

- b.** The most we will pay under this Coverage Extension for loss or damage in any one occurrence at the described premises is \$10,000, unless a higher Limit of Insurance for Accounts Receivable is shown in the Declarations.

For accounts receivable not at the described premises, the most we will pay is \$5,000.

- c.** Property Exclusions does not apply to this Coverage Extension except for:

- (1) 1c, Governmental Action;
- (2) 1d, Nuclear Hazard;
- (3) 1f, War and Military Action;
- (4) 2f, Dishonesty;
- (5) 2g, False Pretense;
- (6) 3; and
- (7) The Accounts Receivable Exclusion.

## 8. Money and Securities

- a.** We will pay for loss of *money* and *securities* used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and cus-

tody of the property, at the described premises or in transit between any of these places, resulting directly from:

- (1) Theft, meaning any act of stealing;
- (2) Disappearance; or
- (3) Destruction.

- b.** In addition to the Limitations and Exclusions applicable to property coverage, we will not pay for loss:

- (1) Resulting from accounting or arithmetical errors or omissions;
- (2) Due to the giving or surrendering of property in any exchange or purchase; or
- (3) Of property contained in any *money*-operated device unless the amount of *money* deposited in it is recorded by a continuous recording instrument in the device.

- c.** The most we will pay for loss in any one occurrence is:

- (1) The limit shown in the Declarations for Inside the Premises for *money* and *securities* while:
  - (a) In or on the described premises; or
  - (b) Within a bank or savings institution; and
- (2) The limit shown in the Declarations for Outside the Premises for *money* and *securities* while anywhere else.

- d.** All loss:

- (1) Caused by one or more persons; or
- (2) Involving a single act or series of related acts;

is considered one occurrence.

- e.** You must keep records of all *money* and *securities* so we can verify the amount of any loss or damage.

## PROPERTY EXCLUSIONS

- 1.** We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

### **a. Ordinance or Law**

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or

- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or

removal of its debris, following a physical loss to that property.

**b. Earth Movement**

- (1) Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in paragraphs (1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But, if volcanic eruption, explosion or effusion results in fire, building glass breakage or volcanic action, we will pay for the loss or damage caused by that fire, building glass breakage or volcanic action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust, or particulate matter; or
- (c) Lava flow.

With respect to coverage for Volcanic Action as set forth in (5)(a), (5)(b) and (5)(c), all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss of or damage to Covered Property.

This exclusion applies regardless of whether any of the above, in paragraphs (1) through (5), is caused by an act of nature or is otherwise caused.

**c. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this policy.

**d. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

But, if nuclear reaction or radiation, or radioactive contamination results in fire, we will pay for the loss or damage caused by that fire.

**e. Power Failure**

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises. Failure includes lack of sufficient capacity and reduction in supply.

But, if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply to loss or damage to *computer(s)* and *electronic data*.

**f. War and Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up, or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
  - (a) Foundations, walls, floors or paved surfaces;
  - (b) Basements, whether paved or not; or
  - (c) Doors, windows or other openings.

But, if water, as described in g(1) through (4), results in fire, explosion or sprinkler leakage, we will pay for the loss or damage

caused by that fire, explosion or sprinkler leakage.

**h. Fungi, Wet Rot, Dry Rot and Bacteria**

Presence, growth, proliferation, spread or any activity of *fungi*, wet or dry rot or bacteria.

But if *fungi*, wet or dry rot or bacteria result in a *specified cause of loss*, we will pay for the loss or damage caused by that *specified cause of loss*.

This exclusion does not apply:

- (1) When *fungi*, wet or dry rot or bacteria result from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage - Limited Coverage for *Fungi*, Wet Rot, Dry Rot and Bacteria (contained in the Limited *Fungi* or Bacteria Coverage) if any, with respect to loss or damage by a cause of loss other than fire or lightning.

**2. We will not pay for loss or damage caused by or resulting from any of the following:**

**a. Electrical Apparatus**

Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.

But, if artificially generated electrical current results in fire, we will pay for the loss or damage caused by fire.

We will pay for loss or damage to *computer(s)* due to artificially generated electrical current.

**b. Consequential Losses**

Delay, loss of use or loss of market.

**c. Smoke, Vapor, Gas**

Smoke, vapor or gas from agricultural smudging or industrial operations.

**d. Steam Apparatus**

Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control.

But, if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

**e. Frozen Plumbing**

Water, other liquids, powder or molten material that leaks or flows from plumbing,

heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1) You do your best to maintain heat in the building or structure; or
- (2) You drain the equipment and shut off the supply if the heat is not maintained.

**f. Dishonesty**

Dishonest or criminal acts by you, anyone else with an interest in the property, or any of your or their partners, *members*, officers, *managers*, employees, directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) Acting alone or in collusion with others; or
- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees; but theft by employees is not covered.

With respect to accounts receivable and *valuable papers and records*, this exclusion does not apply to carriers for hire.

This exclusion does not apply to coverage that is provided under the Employee Dishonesty Optional Coverage.

**g. False Pretense**

Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

**h. Exposed Property**

Rain, snow, ice or sleet to personal property in the open.

**i. Collapse**

Collapse, except as provided in the Additional Coverage for Collapse. But, if collapse results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

**j. Pollution**

We will not pay for loss or damage caused by or resulting from the discharge, dispersal, seepage, migration, release or escape of *pollutants* unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the *specified causes of loss*. But, if the discharge, dispersal, seepage, migration, release or escape of *pollutants* results in a *specified cause of loss*, we will pay for the loss or damage caused by that *specified cause of loss*.

**k. Neglect**

Neglect of an insured to use all reasonable

means to save and preserve property from further damage at and after the time of loss.

#### **I. Other Types of Loss**

- (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force.

This exclusion does not apply with respect to the breakdown of *computer(s)*;

- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.

But, if an excluded cause of loss that is listed in 2I(1) through (7) results in a *specified cause of loss*, or building glass breakage, we will pay for the loss or damage caused by that *specified cause of loss* or building glass breakage.

#### **m. Errors or Omissions**

Errors or omissions in:

- (1) Programming, processing or storing data, as described under *electronic data* or in any *computer* operations; or
- (2) Processing or copying *valuable papers and records*.

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.

#### **n. Installation, Testing, Repair**

Errors or deficiency in design, installation, testing, maintenance, modification or repair of your *computer* system including *electronic data*.

However, we will pay for direct physical loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this coverage form.

#### **o. Electrical Disturbance**

Electrical or magnetic injury, disturbance or erasure of *electronic data*, except as provided for under the Additional Coverages section.

However, we will pay for direct loss or damage caused by lightning.

#### **p. Continuous or Repeated Seepage or Leakage of Water**

Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

3. We will not pay for loss or damage caused by or resulting from any of the following 3a through c. But if an excluded cause of loss that is listed in 3a through c results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

##### **a. Weather Conditions**

But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1 above to produce the loss or damage.

##### **b. Acts or Decisions**

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

##### **c. Negligent Work**

Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

#### **4. Business Income and Extra Expense Exclusions**

##### **a. We will not pay for:**

- (1) Any Extra Expense or increase of Business Income loss, caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming *operations*, due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or can-

cellation is directly caused by the suspension of *operations*, we will cover such loss that affects your Business Income during the *period of restoration*.

- (2) Any other consequential loss.
- b. With respect to this exclusion, suspension means:
  - (1) The partial slowdown or complete cessation of your business activities; and
  - (2) That a part or all of the described premises is rendered untenable, if coverage for Business Income applies.

#### 5. Accounts Receivable Exclusion

The following additional exclusion applies to the Accounts Receivable Coverage Extension:

We will not pay for:

- a. Loss or damage caused by or resulting from alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of *money, securities* or other property.

This exclusion applies only to the extent of the wrongful giving, taking or withholding.

- b. Loss or damage caused by or resulting from bookkeeping, accounting or billing errors or omissions.
- c. Any loss or damage that requires any audit of records or any inventory computation to prove its factual existence.

### PROPERTY LIMITS OF INSURANCE

1. The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.
2. The most we will pay for loss of or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.
3. The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.
4. **Building Limit - Automatic Increase**
  - a. The Limit of Insurance for Buildings will automatically increase by the annual percentage shown in the Declarations.
  - b. The amount of increase will be:
    - (1) The Building limit that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Building limit, times
    - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
    - (3) The number of days since the beginning of the current policy year, or the effective date of the most recent policy change amending the Building limit, divided by 365.

Example:

If:

The applicable Building limit is \$100,000

The annual percentage increase is 8%

The number of days since the beginning of the policy year (or last policy change) is 180

The amount of increase is  
 $\$100,000 \times .08 \times 180 \div 365 = \$3,945$

#### 5. Business Personal Property Limit - Seasonal Increase

- a. The Limit of Insurance for Business Personal Property will automatically increase by 25% to provide for seasonal variations.
- b. This increase will apply only if the Limit of Insurance shown for Business Personal Property in the Declarations is at least 100% of your average monthly values during the lesser of:
  - (1) The 12 months immediately preceding the date the loss or damage occurs; or
  - (2) The period of time you have been in business as of the date the loss or damage occurs.

### PROPERTY OPTIONAL COVERAGES

If shown as applicable in the Declarations, the following Optional Coverages also apply. These coverages are subject to the terms and conditions applicable to property coverage in this policy, except as provided below.

#### 1. Outdoor Signs

- a. We will pay for direct physical loss of or damage to all outdoor signs at the described premises:
  - (1) Owned by you; or

- (2) Owned by others but in your care, custody or control.
- b. Paragraph 3, Covered Causes of Loss, under the Property Coverages Section, and the Property Exclusions Section do not apply to this Optional Coverage, except for the following Property Exclusions:
  - (1) Paragraph 1c, Governmental Action;
  - (2) Paragraph 1d, Nuclear Hazard; and
  - (3) Paragraph 1f, War and Military Action.
- c. We will not pay for loss or damage caused by or resulting from:
  - (1) Wear and tear;
  - (2) Hidden or latent defect;
  - (3) Rust;
  - (4) Corrosion; or
  - (5) Mechanical breakdown.
- d. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Outdoor Signs shown in the Declarations.
- e. The provisions of this Optional Coverage supersede all other references to outdoor signs in this policy.

## 2. Employee Dishonesty

- a. We will pay for direct loss of or damage to Business Personal Property, including *money* and *securities*, resulting from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you or your partner) with the manifest intent to:
  - (1) Cause you to sustain loss or damage; and also
  - (2) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:
    - (a) Any employee; or
    - (b) Any other person or organization.
- b. We will not pay for loss or damage:
  - (1) Resulting from any dishonest or criminal act that you or any of your partners or *members* commit whether acting alone or in collusion with other persons.
  - (2) Resulting from any dishonest act committed by any of your employees (except as provided in paragraph a), *managers* or directors:
    - (a) Whether acting alone or in collusion with other persons; or
    - (b) While performing services for you or otherwise.

- (3) The only proof of which as to its existence or amount is:
  - (a) An inventory computation; or
  - (b) A profit and loss computation.
- c. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Employee Dishonesty shown in the Declarations.
- d. All loss or damage:
  - (1) Caused by one or more persons; or
  - (2) Involving a single act or series of acts; is considered one occurrence.
- e. If any loss is covered:
  - (1) Partly by this insurance; and
  - (2) Partly by any prior cancelled or terminated insurance that we or any affiliate had issued to you or any predecessor in interest;

the most we will pay is the larger of the amount recoverable under this insurance or the prior insurance.

We will pay only for loss or damage you sustain through acts committed or events occurring during the Policy Period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.

- f. This Optional Coverage is cancelled as to any employee immediately upon discovery by:
  - (1) You; or
  - (2) Any of your partners, *members*, *managers*, officers or directors not in collusion with the employee;

of any dishonest act committed by that employee before or after being hired by you.
- g. We will pay only for covered loss or damage sustained during the policy period and discovered no later than one year from the end of the policy period.
- h. If you (or any predecessor in interest) sustained loss or damage during the policy period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Optional Coverage, provided:
  - (1) This Optional Coverage became effective at the time of cancellation or termination of the prior insurance; and
  - (2) The loss or damage would have been covered by this Optional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.

- i. The insurance under paragraph h above is part of, not in addition to, the Limit of Insurance applying to this Optional Coverage and is limited to the lesser of the amount recoverable under:

- (1) This Optional Coverage as of its effective date; or
- (2) The prior insurance had it remained in effect.

- j. With respect to the Employee Dishonesty Optional Coverage in paragraph 2, employee means:

- (1) Any natural person:
  - (a) While in your service or for 30 days after termination of service;
  - (b) Whom you compensate directly by salary, wages or commissions; and
  - (c) Whom you have the right to direct and control while performing services for you.
- (2) Any natural person who is furnished temporarily to you;
  - (a) To substitute for a permanent employee as defined in paragraph (1) above, who is on leave; or
  - (b) To meet seasonal or short-term

work load conditions.

- (3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in paragraph (2) above;
- (4) Any natural person who is a former employee, director, partner, member, manager, representative or trustee retained as a consultant while performing services for you; or
- (5) Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside any building you occupy in conducting your business.

But employee does not mean:

- (1) Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character; or
- (2) Any *manager*, director or trustee except while performing acts coming within the usual duties of an employee.

## PROPERTY DEDUCTIBLES

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance.

In the event that loss or damage occurs to Covered Property at one or more building locations as a result of one occurrence, the largest applicable deductible shown in the Declarations will apply.

2. Regardless of the amount of the Deductible, the most we will deduct from any loss or damage for Glass and under the Outdoor Signs Optional Coverage in any one occurrence is \$250.

But this \$250 deductible will not increase the deductible shown in the Declarations. This deductible will be used to satisfy the requirements of the deductible in the Declarations.

3. No deductible applies to the following Additional Coverages, Extensions of Coverage or Optional Coverages:
  - a. Fire Department Service Charge;
  - b. Business Income and Extra Expense;
  - c. Civil Authority;
  - d. Employee Dishonesty;
  - e. Money and Securities;
  - f. Fire Extinguisher Systems Recharge Expense.

## PROPERTY GENERAL CONDITIONS

### 1. Control of Property

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Form at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition

does not exist.

### 2. Mortgageholders

- a. The term "mortgageholder" includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.

- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - (1) Pays any premium due under this policy at our request if you have failed to do so;
  - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
  - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this policy will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:
  - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be

transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (1) Ten days before the effective date of cancellation if we cancel for your non-payment of premium; or
  - (2) Thirty days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

### 3. No Benefit to Bailee

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

### 4. Policy Period, Coverage Territory

Under this form:

- a. We cover loss or damage commencing:
  - (1) During the policy period shown in the Declarations; and
  - (2) Within the coverage territory or, with respect to property in transit, while it is between points in the coverage territory.
- b. The coverage territory is:
  - (1) The United States of America (including its territories and possessions);
  - (2) Puerto Rico; and
  - (3) Canada.

## PROPERTY LOSS CONDITIONS

### 1. Abandonment

There can be no abandonment of any property to us.

### 2. Appraisal

If we and you disagree on the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

### 3. Duties in the Event of Loss or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:
  - (1) Notify the police if a law may have been broken.
  - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses reasonably incurred to protect the Cov-

ered Property. We will consider these expenses in the settlement of a claim, but this will not increase the applicable Limit of Insurance. However, we will not consider any expenses incurred in order to protect the Covered Property from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.  
Also, permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.
- (9) Resume all or part of your *operations* as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

#### 4. Legal Action Against Us

No one may bring a legal action against us under this insurance unless:

- a. There has been full compliance with all of the terms of this insurance; and
- b. The action is brought within two years after the date on which the direct physical loss or damage occurred.

#### 5. Loss Payment and Valuation

In the event of loss or damage covered by this Coverage Form:

- a. At our option, we will either:
  - (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property;

- (3) Take all or any part of the property at an agreed or appraised value; or
- (4) Repair, rebuild or replace the property with other property of like kind and quality.
- b. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. Our payment for loss of or damage to personal property of others will only be for the account of the owners of the property. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- e. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- f. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, provided you have complied with all of the terms of this policy and we have reached agreement with you on the amount of loss or an appraisal award has been made.
- g. Except as provided in (2) through (7) below, we will determine the value of Covered Property as follows:
  - (1) At replacement cost without deduction for depreciation, if Replacement Cost is indicated in the Declarations as the basis for valuation of the Covered Property.
    - (a) You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.
    - (b) We will not pay on a replacement cost basis for any loss or damage:
      - (i) Until the lost or damaged property is actually repaired or replaced; and
      - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

However, if the cost to repair or

replace the damaged building property is \$2,500 or less, we will settle the loss according to the provisions of paragraph g(1) above whether or not the actual repair or replacement is complete.

- (c) We will not pay more for loss or damage on a replacement cost basis than the least of:
  - (i) The cost to replace, on the same premises, the lost or damaged property with other property that is of comparable material and quality and is used for the same purpose.
  - (ii) The amount you actually spend that is necessary to repair or replace the lost or damaged property.
  - (iii) The limit shown in the Declarations for the Covered Property.

If a building is rebuilt at a new premises, the cost is limited to the cost which would have been incurred had the building been built at the original premises.

- (2) At actual cash value, if Actual Cash Value is indicated in the Declarations as the basis for valuation of the Covered Property. We will never pay more than the applicable limit shown in the Declarations.
- (3) The following property at actual cash value:
  - (a) Used or second-hand merchandise held in storage or for sale;
  - (b) Property of others. However, if an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance;
  - (c) Household contents, except personal property in apartments or rooms furnished by you as landlord;
  - (d) Manuscripts; and
  - (e) Works of art, antiques or rare articles, including etchings, pictures, statuary, marble, bronzes, porcelain and bric-a-brac.
- (4) Glass at the cost of replacement with safety glazing material if required by law.

- (5) *Money* at its face value.
- (6) *Securities* at their value at the close of business on the day the loss is discovered.
- (7) Applicable only to Accounts Receivable:
  - (a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage:
    - (i) We will determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and
    - (ii) We will adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss or damage occurred or for any demonstrated variance from the average for that month.
  - (b) The following will be deducted from the total amount of accounts receivable, however that amount is established:
    - (i) The amount of the accounts for which there is no loss or damage;
    - (ii) The amount of the accounts that you are able to re-establish or collect;
    - (iii) An amount to allow for probable bad debts that you are normally unable to collect; and
    - (iv) All unearned interest and service charges.

## 6. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, you may retain the property. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

## 7. Resumption of Operations

We will reduce the amount of your:

- a. Business Income loss, other than Extra Expense, to the extent you can resume your *operations*, in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
- b. Extra Expense loss to the extent you can return *operations* to normal and discontinue such Extra Expense.

**8. Vacancy****a. Description of Terms**

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (a) and (b) below:
  - (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
  - (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:
    - (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
    - (ii) Used by the building owner to conduct customary operations.

- (2) Buildings under construction or renovation are not considered vacant.

**b. Vacancy Provisions**

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
  - (a) Vandalism;
  - (b) Sprinkler leakage, unless you have protected the system against freezing;
  - (c) Building glass breakage;
  - (d) Water damage;
  - (e) Theft; or
  - (f) Attempted theft.
- (2) With respect to Covered Causes of Loss other than those listed in (1)(a) through (1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

**PROPERTY DEFINITIONS****1. "Computer" means:**

- a. Programmable electronic equipment that is used to store, retrieve and process data; and
- b. Associated peripheral equipment that provides communication, including input and output functions such as printing and auxiliary functions such as data transmission.

*Computer* does not include those used to operate production type machinery or equipment.

2. "*Counterfeit money*" means an imitation of money that is intended to deceive and to be taken as the original.
3. "*Electronic data*" means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of *electronic data*, means a set of related electronic instructions which direct the operations and functions of a *computer* or device connected to it, which enable the *computer* or device to receive, process, store, retrieve or send data.
4. "*Fungi*" means any type or form of fungus,

including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by *fungi*.

5. "*Manager*" means a person serving in a directorial capacity for a limited liability company.
6. "*Member*" means an owner of a limited liability company represented by its membership interest, who also may serve as a *manager*.
7. "*Money*" means:
  - a. Currency, coins and bank notes in current use and having a face value; and
  - b. Travelers checks, register checks and money orders held for sale to the public.
8. "*Operations*" mean your business activities occurring at the described premises.
9. "*Period of restoration*" means the period of time that:
  - a. Begins:

- (1) 24 hours after time of direct physical loss or damage for Business Income coverage; or
- (2) Immediately after the time of direct physical loss or damage for Extra Expense coverage;

Caused by or resulting from any Covered Cause of Loss at the described premises; and

**b.** Ends on the earlier of:

- (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
- (2) The date when business is resumed at a new permanent location.

*Period of restoration* does not include any increased period required due to the enforcement of any ordinance or law that:

- a.** Regulates the construction, use or repair, or requires the tearing down of any property; or
- b.** Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or in any way respond to or assess the effects of *pollutants*.

The expiration date of this policy will not cut short the *period of restoration*.

- 10.** "*Pollutants*" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 11.** "*Securities*" means negotiable and nonnegotiable instruments or contracts representing either *money* or other property and includes:
  - a.** Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - b.** Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;
 but does not include *money*.
- 12.** "*Specified causes of loss*" means the following:  
Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action;

falling objects; weight of snow, ice or sleet; water damage.

- a.** Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

- (1) The cost of filling sinkholes; or
- (2) Sinking or collapse of land into man-made underground cavities.

- b.** Falling objects does not include loss of or damage to:

- (1) Personal Property in the open; or
- (2) The interior of a building or structure or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

- c.** Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.

- 13.** "*Stock*" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

- 14.** "*Valuable papers and records*" means inscribed, printed, or written:

- a.** Documents;
- b.** Manuscripts; and
- c.** Records;

including abstracts, books, deeds, drawings, films, maps or mortgages.

But *valuable papers and records* does not mean *money* or *securities*.

**BIS-PAK COMMON POLICY CONDITIONS**

**Index of Policy Provisions**

	Page		Page
A. CANCELLATION .....	1	G. LIBERALIZATION .....	1
B. CHANGES .....	1	H. OTHER INSURANCE .....	1
C. CONCEALMENT, MISREPRESENTATION OR FRAUD .....	1	I. PREMIUMS .....	2
D. EXAMINATION OF YOUR BOOKS AND RECORDS .....	1	J. TRANSFER OF RIGHTS OF RECOVERY	2
E. INSPECTIONS AND SURVEYS .....	1	K. TRANSFER OF YOUR RIGHTS AND DUTIES .....	3
F. INSURANCE UNDER TWO OR MORE COVERAGES .....	1	L. REPRESENTATIONS .....	3
		M. WHEN WE DO NOT RENEW .....	3

**BIS-PAK COMMON POLICY CONDITIONS**

All coverages of this Coverage Part are subject to the following conditions.

**A. CANCELLATION**

1. The First Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the First Named Insured written notice of cancellation at least:
  - a. Ten days before the effective date of cancellation if we cancel for nonpayment of premium.
  - b. Thirty days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the First Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the First Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the First Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

**B. CHANGES**

This policy contains all the agreements between you and us concerning the insurance afforded. The First Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

**C. CONCEALMENT, MISREPRESENTATION OR FRAUD**

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

**D. EXAMINATION OF YOUR BOOKS AND RECORDS**

We may examine and audit your books and

records as they relate to this policy at any time during the policy period and up to three years afterward.

**E. INSPECTIONS AND SURVEYS**

1. We have the right to:
  - a. Make inspections and surveys at any time;
  - b. Give you reports on the conditions we find; and
  - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1 and 2 of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2 of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

**F. INSURANCE UNDER TWO OR MORE COVERAGES**

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

**G. LIBERALIZATION**

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

**H. OTHER INSURANCE**

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering

on the same basis.

2. If there is other insurance covering the same loss or damage, other than that described in 1 above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.
3. Business Liability Coverage is excess over:
  - a. Any of the other insurance, whether primary, excess, contingent or on any other basis:
    - (1) That is Fire, Extended Coverage, Builders' Risk, Installation Risk or similar coverage for *your work*;
    - (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner; or
    - (3) If the loss arises out of the maintenance or use of aircraft, *autos* or watercraft to the extent not subject to Exclusion g.
  - b. Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.
4. When Business Liability Coverage is excess, we will have no duty to defend the insured against any *suit* if any other insurer has a duty to defend the insured against that *suit*. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When Business Liability Coverage is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- a. The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- b. The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

#### **I. PREMIUMS**

1. The First Named Insured shown in the Declarations:

- a. Is responsible for the payment of all premiums; and
  - b. Will be the payee for any return premiums we pay.
2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.
  3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:
    - a. Paid to us prior to the anniversary date; and
    - b. Determined in accordance with paragraph 2 above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.
  4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that are not shown in the Declarations. If so, we may require an additional premium.

#### **J. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

##### **1. Applicable to Property coverage:**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

- a. Prior to a loss to your Covered Property.
- b. After a loss to your Covered Property only if, at the time of loss, that party is one of the following:
  - (1) Someone insured by this insurance;
  - (2) A business firm:
    - (a) Owned or controlled by you; or
    - (b) That owns or controls you; or
  - (3) Your tenant.

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

**2. Applicable to Liability coverage:**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring *suit* or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

**K. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual Named Insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper tem-

porary custody of your property will have your rights and duties but only with respect to that property.

**L. REPRESENTATIONS**

By accepting this policy, you agree:

1. The statements in the Declarations are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this policy in reliance upon your representations.

**M. WHEN WE DO NOT RENEW**

If we elect not to renew this policy, we will mail or deliver to the First Named Insured shown in the Declarations written notice of the non-renewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

**ACUITY ENHANCEMENTS - LIABILITY COVERAGES**

CB-7268(11-14)

This endorsement modifies insurance provided under the following:

**BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM**

**A. Increased Bail Bond Amount**

Paragraph 1f(1)(b) under Liability and Medical Expenses Coverages is replaced by the following:

- (b) Up to \$1,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for *bodily injury* applies. We do not have to furnish these bonds.

**B. Increased Reasonable Expenses Incurred by Insured**

Paragraph 1f(1)(d) under Liability and Medical Expenses Coverages is replaced by the following:

- (d) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or *suit*, including actual loss of earnings up to \$350 a day because of time off from work.

**C. Newly Acquired Organizations**

Paragraph 3a under Who Is An Insured is replaced by the following:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

**D. Tenants Legal Liability**

Paragraphs (1), (3) and (4) of the Damage to Property Exclusion do not apply to *property damage* (other than damage by fire or explosion) to premises, including the contents of such premises, rented to you for a period of 8 or more consecutive days.

The most we will pay under this coverage for damages because of *property damage* to any one premises is \$10,000. A \$250 deductible applies.

**E. Knowledge of Claim or Suit**

The following is added to the Duties in the Event of Occurrence, Offense, Claim or Suit Condition:

Knowledge of an *occurrence*, offense, claim or *suit* by an agent or *employee* of any insured shall not in itself constitute knowledge of the insured unless your partners, *executive officers*, directors, managers, members or a person who has been designated by them to receive reports of *occurrences*, offenses, claims or *suits* shall have received such notice from the agent or *employee*.

**F. Broadened Bodily Injury**

The definition of *bodily injury* is amended to include mental anguish.

**G. Unintentional Failure to Disclose Hazard**

The following is added to the Representations Condition in the Bis-Pak Common Policy Conditions:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject Liability coverage under this policy based solely on such failure.

**H. Waiver of Subrogation for Written Contracts**

The following is added to the Transfer of Rights of Recovery Against Others to Us Condition under 2 Applicable to Liability Coverage in the Bis-Pak Common Policy Conditions:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or *your work* done under a contract with that person or organization and included in the *products-completed operations hazard*. The waiver applies only to a person or organization with whom you have a written contract or agreement in which you are required to waive rights of recovery under this policy. Such contract or agreement must have been executed prior to the *occurrence* causing injury or damage.

**I. Electronic Data Liability**

1. Exclusion 1s is replaced by the following:

This insurance does not apply to:

- s. Access or Disclosure of Confidential or Personal Information and Data-related Liability

- (1) Damages, other than damages because of *personal and advertising injury*, arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information; or
- (2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate *electronic data* that does not result from physical injury to tangible property.

This exclusion applies even if damages

are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in paragraph (1) or (2) above.

However, unless paragraph (1) above applies, this exclusion does not apply to damages because of *bodily injury*.

2. The following paragraph is added to Liability and Medical Expenses Limits of Insurance:

Subject to 2 above, \$10,000 is the most we will pay for *property damage* because of all loss of *electronic data* arising out of any one *occurrence*.

3. The following definition is added to Liability and Medical Expenses Definitions:

"*Electronic data*" means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

4. For the purposes of this coverage, the definition of "*property damage*" is replaced by the following:

"*Property damage*" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the *occurrence* that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate *electronic data*, resulting from physical injury to tangible property. All such loss of *electronic data* shall be deemed to occur at the time of the *occurrence* that caused it.

For the purposes of this coverage, *electronic data* is not tangible property.

## J. Employee Benefits Liability Coverage

1. The following is added to Liability and Medical Expenses Coverages:

### Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission, of the insured, or of any other person for whose acts the insured is legally liable, to which this coverage applies. We will have the right and duty to defend the insured against any *suit* seeking those damages. However, we will have no duty to defend the insured against any *suit* seeking damages to which this coverage does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any *claim* or *suit* that may result. But:

- (1) The amount we will pay for damages is limited as described in paragraph 5 of this coverage; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This coverage applies to damages only if:

- (1) The act, error or omission, is negligently committed in the *administration* of your *employee benefit program*;
- (2) The act, error or omission, did not take place before the original inception date of this coverage nor after the end of the policy period; and
- (3) A *claim* for damages, because of an act, error or omission, is first made against any insured, in accordance with paragraph c below, during the policy period or an Extended Reporting Period we provide under paragraph 6 of this coverage.

- c. A *claim* seeking damages will be deemed to have been made at the earlier of the following times:

- (1) When notice of such *claim* is received and recorded by any insured or by us, whichever comes first; or
- (2) When we make settlement in accordance with paragraph a above.

A *claim* received and recorded by the insured within 60 days after the end of the policy period will be considered to have been received within the policy period, if no subsequent policy is available to cover the "claim".

- d. All *claims* for damages made by an *employee* because of any act, error or omission, or a series of related acts, errors or omissions, including damages claimed by such *employee's* dependents and beneficiaries, will be deemed to have been made at the time the first of those *claims* is made against any insured.

#### **Exclusions**

This coverage does not apply to:

- a. **Dishonest, Fraudulent, Criminal Or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

- b. **Bodily Injury, Property Damage, Or Personal And Advertising Injury**

*Bodily injury, property damage or personal and advertising injury.*

- c. **Failure To Perform A Contract**

Damages arising out of failure of performance of contract by any insured.

- d. **Insufficiency Of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the *employee benefit program*.

- e. **Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation**

Any *claim* based upon:

- (1) Failure of any investment to perform;
- (2) Errors in providing information on past performance of investment vehicles; or
- (3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the *employee benefit program*.

- f. **Workers' Compensation And Similar Laws**

Any *claim* arising out of your failure to comply with the mandatory provisions of any workers' compensation, unem-

ployment compensation insurance, social security or disability benefits law or any similar law.

- g. **ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

- h. **Available Benefits**

Any *claim* for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

- i. **Taxes, Fines Or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

- j. **Employment-Related Practices**

Damages arising out of wrongful termination of employment, discrimination, or other employment-related practices.

- 2. For the purposes of the coverage provided:

- a. All references to Supplementary Payments are replaced by Supplementary Payments and Employee Benefits Liability.

- b. Paragraphs f(1)(b), f(2) and f(3) Coverage Extension - Supplementary Payments do not apply.

- 3. For the purposes of the coverage provided, paragraphs 2 and 4 under Who Is An Insured are replaced by the following:

- 2. Each of the following is also an insured:

- a. Each of your *employees* who is or was authorized to administer your *employee benefit program*.

- b. Any persons, organizations or *employees* having proper temporary authorization to administer your *employee benefit program* if you die, but only until your legal representative is appointed.

- c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this coverage.

- 4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a

Named Insured if no other similar insurance applies to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier.
  - b. Coverage under this provision does not apply to any act, error or omission that was committed before you acquired or formed the organization.
4. For the purposes of the coverage provided, the Liability And Medical Expenses Limits Of Insurance Section is replaced by the following:

#### Limits Of Insurance

- a. The Limits of Insurance shown in d below and the rules below fix the most we will pay regardless of the number of:
  - (1) Insureds;
  - (2) *Claims* made or *suits* brought;
  - (3) Persons or organizations making *claims* or bringing *suits*;
  - (4) Acts, errors or omissions; or
  - (5) Benefits included in your *employee benefits program*.
- b. The Aggregate Limit is the most we will pay for all damages because of acts, errors or omissions negligently committed in the *administration* of your *employee benefit program*.
- c. Subject to the Aggregate Limit, the Each Employee Limit is the most we will pay for all damages sustained by any one *employee*, including damages sustained by such *employee's* dependents and beneficiaries, as a result of:
  - (1) An act, error or omission; or
  - (2) A series of related acts, errors or omissions negligently committed in the *administration* of your *employee benefit program*.

However, the amount paid under this coverage shall not exceed, and will be subject to, the limits and restrictions that apply to the payment of benefits in any plan included in the *employee benefit program*.

#### d. Limits of Insurance

Each Employee Limit: \$250,000

Aggregate Limit: \$250,000

The Limits of Insurance of this coverage apply separately to each consecutive an-

nual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations of the policy to which this coverage is attached, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### Deductible

- a. Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the deductible amount stated in e below as applicable to Each Employee. The Limits of Insurance shall not be reduced by the amount of this deductible.
  - b. The deductible amount stated in e below applies to all damages sustained by any one *employee*, including such *employee's* dependents and beneficiaries, because of all acts, errors or omissions to which this coverage applies.
  - c. The terms of this coverage, including those with respect to:
    - (1) Our right and duty to defend any *suits* seeking those damages; and
    - (2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or *claim*

apply irrespective of the application of the deductible amount.
  - d. We may pay any part or all of the deductible amount to effect settlement of any *claim* or *suit* and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as we have paid.
  - e. Deductible  
Each Employee Deductible: \$1,000
5. For the purposes of the coverage provided, Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition is replaced by the following:
2. **Duties In The Event Of An Act, Error Or Omission, Or Claim Or Suit**
- a. You must see to it that we are notified as soon as practicable of an act, error or omission which may result in a *claim*. To the extent possible, notice should include:
    - (1) What the act, error or omission was and when it occurred; and

- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.
  - b. If a *claim* is made or *suit* is brought against any insured, you must:
    - (1) Immediately record the specifics of the *claim* or *suit* and the date received; and
    - (2) Notify us as soon as practicable.
  - c. You and any other involved insured must:
    - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the *claim* or *suit*;
    - (2) Authorize us to obtain records and other information;
    - (3) Cooperate with us in the investigation or settlement of the *claim* or defense against the *suit*; and
    - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an act, error or omission to which this coverage may also apply.
  - d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.
  - e. The requirements to notify us can be satisfied by notifying our agent. Notice can be by any means of communication.
6. For the purposes of the coverage provided, the following Extended Reporting Period provisions are added:

#### **EXTENDED REPORTING PERIOD**

- a. You will have the right to purchase an Extended Reporting Period, as described below, if:
  - (1) This coverage is canceled or not renewed; or
  - (2) We renew or replace this coverage with insurance that:
    - (a) Has an inception date later than the original inception date of this coverage; or
    - (b) Does not apply to an act, er-

ror or omission on a claims-made basis.

- b. The Extended Reporting Period does not extend the policy period or change the scope of coverage provided. It applies only to *claims* for acts, errors or omissions that were first committed before the end of the policy period but not before the original inception date of this coverage. Once in effect, the Extended Reporting Period may not be canceled.
- c. An Extended Reporting Period of five years is available, but only by an endorsement and for an extra charge.

You must give us a written request for the endorsement within 60 days after the end of the policy period. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- (1) The *employee benefit programs* insured;
- (2) Previous types and amounts of insurance;
- (3) Limits of Insurance available under this coverage for future payment of damages; and
- (4) Other related factors.

The additional premium will not exceed \$100.

The Extended Reporting Period endorsement applicable to this coverage shall set forth the terms, not inconsistent with this Section, applicable to the Extended Reporting Period, including a provision to the effect that the coverage afforded for *claims* first received during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Reporting Period.

- d. If the Extended Reporting Period is in effect, we will provide an extended reporting period aggregate limit of insurance described below, but only for claims first received and recorded during the Extended Reporting Period.

The extended reporting period aggregate limit of insurance will be equal to the dollar amount shown in 4d of this coverage under Limits of Insurance.

Paragraph 4b of this coverage will be amended accordingly. The Each Em-

ployee Limit shown in 4d will then continue to apply as set forth in paragraph 4c.

7. For the purposes of the coverage provided, the following definitions are added to Liability And Medical Expenses Definitions:

a. "*Administration*" means:

- (1) Providing information to *employees*, including their dependents and beneficiaries, with respect to eligibility for or scope of *employee benefit programs*;
- (2) Handling records in connection with the *employee benefit program*; or
- (3) Effecting, continuing or terminating any *employee's* participation in any benefit included in the *employee benefit program*.

However, *administration* does not include handling payroll deductions.

b. "*Cafeteria plans*" means plans authorized by applicable law to allow employees to elect to pay for certain benefits with pre-tax dollars.

c. "*Claim*" means any demand, or *suit*, made by an *employee* or an *employee's* dependents and beneficiaries, for damages as the result of an act, error or omission.

d. "*Employee benefit program*" means a program providing some or all of the following benefits to *employees*, whether provided through a *cafeteria plan* or otherwise:

- (1) Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an *employee* may subscribe to such benefits and such benefits are made generally available to those *employees* who satisfy the plan's eligibility requirements;
- (2) Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an *employee* may subscribe to such benefits and such benefits are made generally available to all *employees* who are eligible under the plan for such benefits;
- (3) Unemployment insurance, social security benefits, workers' compensation and disability benefits;
- (4) Vacation plans, including buy and

sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies; and

- (5) Any other similar benefits added thereto by endorsement.

8. For the purposes of the coverage provided, the following Definitions in the Liability And Medical Expenses Definitions Section are replaced by the following:

a. "*Employee*" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. *Employee* includes a *leased worker*. *Employee* does not include a *temporary worker*.

b. "*Suit*" means a civil proceeding in which damages because of an act, error or omission to which this coverage applies are alleged. *Suit* includes:

- (1) An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- (2) Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

9. The Bis-Pak Common Policy Conditions are amended as follows:

For the purposes of the coverage provided, paragraph H3 Other Insurance is replaced by the following:

3. This Employee Benefits Liability Coverage is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is effective prior to the beginning of the policy period shown in the Declarations and that applies to an act, error or omission on other than a claims-made basis, if the other insurance has a policy period which continues after the original inception date of this coverage.

#### K. Voluntary Property Damage

1. With respect to the insurance provided under this coverage, the following apply:

a. Exclusion 1k(4) is replaced by the following:

- (4) Personal property of others:

- (a) Held by the insured for servicing, repair, storage or sale at premises owned, occupied or rented to the insured.
- (b) Caused by the ownership, maintenance, use, loading or

unloading of any auto, watercraft, or transportation of property by any means.

- b. Exclusion 1k(5) is deleted.
- 2. The insurance provided by this coverage is subject to the following provisions:
  - a. We will pay for *property damage* at your request even if you are not legally liable, if it is otherwise subject to this coverage.
  - b. *Property damage* does not include loss of use if personal property of others is not physically injured.
  - c. **Limits**  
 The most we will pay for an *occurrence* under this coverage is \$2,500.  
 The most we will pay for the sum of all amounts paid under this coverage is an aggregate of \$2,500.  
 The Liability and Medical Expenses Limit and the Aggregate Limits do not apply to the insurance provided under this coverage.
  - d. **Settlement**  
 If you make any repairs to damaged property, at our request, we will pay the larger of your actual cost or 75% of your usual charge for the necessary labor and materials. Any property paid for or replaced by us may become our property at our option. Any payment

made under this coverage shall not be interpreted as an admission of liability by the insured or the company.

**e. Deductible**

Our obligation to pay for a covered loss applies only to the amount of loss in excess of \$100.

**f. Other Insurance**

The insurance provided by this coverage is excess over any other insurance carried by the insured which applies to a loss covered by this coverage.

**L. Increased Limits of Insurance**

1. The General Aggregate Limit is increased to three times the Liability and Medical Expenses Limit if your current Liability and Medical Expenses Limit is equal to \$500,000 or \$1,000,000.
2. The Products-Completed Operations Aggregate Limit is increased to three times the Liability and Medical Expenses Limit if your current Liability and Medical Expenses Limit is equal to \$500,000 or \$1,000,000.
3. The Damage To Premises Rented To You Limit is increased to \$250,000.
4. The Medical Expense Limit is increased to \$10,000.

The Limits of Insurance shown here do not replace and are not in addition to the Limits of Insurance shown in the Declarations.

**FUNGI OR BACTERIA EXCLUSION (LIABILITY)**

**CB-0577(4-10)**

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

- A.** The following exclusion is added to Paragraph 1 under Exclusions:

**Fungi or Bacteria**

- (1) *Bodily injury, property damage, personal injury or advertising injury* which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any *fungi* or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

- (2) Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, *fungi* or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any *fungi* or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

- B.** The following definition is added to Liability and Medical Expenses Definitions:

"*Fungi*" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by fungi.

**PROPERTY IN THE COURSE OF CONSTRUCTION - SOUTH DAKOTA****CB-7221(4-10)**

This endorsement modifies insurance provided under the following:

DELUXE BIS-PAK PROPERTY COVERAGE FORM

The provisions of the Coverage Form to which this endorsement is attached apply to the coverage provided by this endorsement except as modified below:

**1. PROPERTY COVERAGES**

**a. Property Covered**

Paragraph 1, Covered Property, under the Property Coverages Section is replaced by the following:

We cover the following types of property owned by you or for which you are legally liable at *covered job sites* and while in transit between your premises or a temporary storage location and a *covered job site*:

- (1) Buildings Under Construction. This means buildings and additions to buildings under construction, alteration or repair by you. This includes:
  - (a) Materials and supplies which will become a permanent part of the buildings or structures, foundations, excavations, grading, filling, attachments and permanent fixtures;
  - (b) Materials, equipment, supplies and temporary structures used for and located on or within 1,000 feet of buildings under construction, alteration or repair; and
  - (c) Scaffolding or construction forms, provided the scaffolding or construction forms are located at a building or structure under construction, alteration or repair.
- (2) Installation Projects. This means materials, supplies, machinery, fixtures and equipment on or within 1,000 feet of your installation, fabrication or erection projects that will become a permanent part of the installation, fabrication or erection projects.
- (3) Temporary Storage Locations. This means materials, equipment and supplies at temporary storage locations that will become part of Buildings Under Construction or Installation Projects. Coverage under this provision is not restricted to *covered job sites*.

**b. Limitations**

Limitation a(6) does not apply to the coverage provided by this endorsement.

**c. Additional Coverages**

The following Additional Coverages do not

apply to the coverage provided by this endorsement:

- (1) Collapse;
- (2) Water, Other Liquids, Powder or Molten Material Damage;
- (3) Business Income and Extra Expense;
- (4) Civil Authority;
- (5) Money Orders and Counterfeit Paper Currency;
- (6) Forgery and Alteration;
- (7) Increased Cost of Construction;
- (8) Business Income from Dependent Properties; and
- (9) Glass Expenses.

The following Additional Coverages are added and apply only to Property in the Course of Construction:

- (1) Contract Penalty. When a covered cause of loss occurs to a covered Building Under Construction or a covered Installation Project, we cover the cost of contractual penalties for non-completion when you are unable to complete construction or installation in accordance with contract terms or conditions. Your inability to complete construction or installation on time must be as a result of a loss by a covered cause of loss.

The most we will pay under this additional coverage is \$10,000 for all contractual penalties arising out of one occurrence.

- (2) Expediting Expenses. When a covered cause of loss occurs to a covered Building Under Construction or a covered Installation Project, we pay for reasonable expediting expenses necessary to complete construction or installation within the time frame specified in the construction contract.

Expediting expenses include additional labor and overtime, transportation costs, storage expense and the expense to rent additional equipment.

The most we will pay for all expediting expenses in one occurrence is \$10,000.

- (3) Ordinance or Law, Buildings Under Construction.

- (a) When a covered cause of loss occurs to a covered Building Under Construction, we cover:

Enforcement of Law. This means

loss caused by the enforcement of any ordinance, law or decree that:

- (i) Requires the demolition of undamaged parts of buildings under construction that are damaged or destroyed by a covered cause of loss;
- (ii) Regulates the construction or repair of buildings under construction or establishes building, zoning or land use requirements at the site of construction; and
- (iii) Is in force at the time of loss.

**Increased Cost of Construction.** This means the increased cost to repair, rebuild or construct buildings under construction as a result of the enforcement of any building, zoning or land use ordinance, law or decree. If buildings under construction are repaired or rebuilt, they must be intended for similar occupancy as the current property unless otherwise required by a building, zoning or land use ordinance, law or decree.

**Cost to Demolish and Clear.** This means the cost to demolish and clear the site of undamaged parts of buildings under construction that are damaged or destroyed by a covered cause of loss as a result of the enforcement of the building, zoning or land use ordinance, law or decree.

- (b) We do not cover the costs associated with the enforcement of any ordinance, law or decree that requires you to or anyone else to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effects of *pollutants*.
- (c) We do not cover the Increased Cost of Construction until the covered building under construction is actually repaired or replaced and unless the repairs or replacement are made as soon as reasonably possible after the loss, not to exceed two years.
- (d) If the building under construction is repaired or replaced, we pay the lesser of:
  - (i) The amount you actually spend to demolish and clear the site, plus the amount you

actually spend to repair, rebuild or construct the property but not for more than buildings of the same height, floor area and style; or

(ii) \$50,000.

- (e) If the covered building or structure is not repaired or replaced, we pay the lesser of:

(i) The amount you actually spend to demolish and clear the site, plus the cost to replace the damaged or destroyed property with other property of like kind and quality and used for the same purpose; or

(ii) \$50,000.

- (4) **Testing.** We pay for loss caused by testing including start-up, performance, stress, pressure or overload testing of materials, supplies, machinery, fixtures and equipment that will become a permanent part of an Installation Project.

The most we will pay for all loss caused by testing in one occurrence is \$10,000.

- (5) **Collapse.**

(a) With respect to buildings:

(i) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose;

(ii) A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse;

(iii) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building;

(iv) A building that is standing or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

(v) Collapse does not include settling, cracking, shrinkage, bulging or expansion.

(b) We will pay for loss or damage caused by or resulting from the collapse of all or any part of the insured building or structure, but only if caused by one or more of the following causes of loss:

- (i) Fire, lightning, windstorm, hail, explosion, smoke, vandalism, falling objects, vehicles, glass breakage or weight of ice or snow;
- (ii) Accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam;
- (iii) Water below the surface of the ground that exerts pressure on foundations or walls;
- (iv) Weight of rain that collects on a roof; or
- (v) Weight of personal property or people.
- (vi) Decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse; or
- (vii) Insect or vermin damage that is hidden from view, unless the presence of such decay is known to an insured prior to collapse.

The criteria set forth in paragraphs (a)(i) through (a)(v) do not limit the coverage otherwise provided under this Additional Coverage for the causes of loss listed in paragraphs (b)(i) through (b)(v).

This additional coverage does not increase the coverage amount. The deductible amount shown in the Schedule applies to this additional coverage.

d. The following is added:

**Soft Costs and Rental Income**

The following coverages are added:

- (1) Soft Costs. We pay for soft cost expenses that arise out of a *delay* caused by a covered cause of loss. Soft cost expenses means the necessary expenses relating to the construction, erection or fabrication of Buildings Under Construction or Installation Projects that are over and above those costs which would have been incurred had there been no *delay*. These costs consist of:
  - (a) Advertising. Additional advertising and promotional expenses.

- (b) Expediting Expenses. Expediting expenses such as overtime and additional transportation or storage costs;
- (c) Fees. Additional fees for architects, engineers, consultants, attorneys and accountants;
- (d) Interest. Additional interest on money borrowed to finance construction, remodeling, renovation or repair;
- (e) Leases. The cost of administrative expenses and commissions which result from the renegotiation of leases; or
- (f) Realty Taxes. Additional realty taxes and other assessments which you incur for the period of time that construction has been extended beyond the projected completion date.

- (2) Rental Income. We pay for actual loss of rental income that arises out of a *delay* caused by a covered cause of loss. Expenses that do not necessarily continue because of a *delay* will be deducted from the loss of rental income.

The most we will pay for the total of all soft costs and rental income arising out of one occurrence is 5% of the limit of insurance shown in the Schedule.

The following exclusions are added which apply only to Soft Costs and Rental Income Coverage:

- (1) Additional Time. We do not pay for any increase in loss resulting from additional time that would be required to replace or repair any part of the covered property due to:
  - (a) Ordinances or laws requiring the use of construction materials or equipment that are different from the property that is destroyed;
  - (b) Ordinances or laws requiring you to test, evaluate, observe or record the existence, level or effects of *pollutants*;
  - (c) Adverse weather conditions; or
  - (d) Improvements necessary to correct deficiencies of original construction, erection or fabrication.
- (2) Consequential Loss. We do not pay for any increase in loss resulting from any consequential loss.
- (3) Lease, Contract or License. We do not pay for any increase in loss resulting from the suspension, lapse or cancella-

tion of any lease, contract or license.

- (4) Strikes, Protests and Other Interference. We do not pay for any increase in loss resulting from interference by strikers or anyone else interfering with the rebuilding, repairing or replacing the Buildings Under Construction or Installation Projects.

The following additional coverages are added which apply only to Soft Costs and Rental Income Coverage:

- (1) Expense to Reduce Loss. We extend your coverage to include necessary expenses incurred to reduce the amount of soft cost expenses or loss of rental income. Expenses paid under this additional coverage will not increase the applicable limit. We do not pay for:
- (a) Expenses to extinguish a fire; or
  - (b) Expenses that exceed the amount by which a loss is reduced.
- (2) Interruption by Civil Authority. We extend coverage for soft cost expenses to include loss while access to Buildings Under Construction or Installation Projects is specifically denied by an order of civil authority. This order must be a result of damage to property other than at the Buildings Under Construction or Installation Projects and caused by a covered cause of loss. This extension is limited to two consecutive weeks from the date of order. This does not increase the limit.

## 2. PROPERTY EXTENSIONS OF COVERAGE

The Property Extensions of Coverage do not apply to the coverage provided by this endorsement.

## 3. PROPERTY EXCLUSIONS

- a. Exclusions 2a, Electrical Apparatus; 2c, Smoke, Vapor, Gas; 2e, Frozen Plumbing; 2l(3), Smog; 2l(4), Settling, Cracking, Shrinking or Expansion; 2l(6), Mechanical Breakdown, including rupture or bursting caused by centrifugal force; and 3a, Weather do not apply to Property in the Course of Construction.
- b. Property Exclusion 1g, Water, is replaced by the following with respect to Property in the Course of Construction:

### Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from

a sewer, drain or sump; or

- (4) Water below the surface of the ground. This includes water that exerts pressure on or flows, seeps or leaks into a building, floor, sidewalk, driveway or other structure, or through a door, window or other opening. This does not apply to water below the surface of the ground that exerts pressure on foundations or walls causing them to collapse as provided under Additional Coverage (5), Collapse.
- c. The following exclusions are added which apply only to Property in the Course of Construction:
- (1) Explosion, Rupture or Bursting. We do not pay for loss caused by explosion, rupture or bursting of steam boilers, steam or gas turbines, steam pipes or steam engines. This exclusion applies only to loss or damage to the steam boilers, steam or gas turbines, steam pipes or steam engine in which the loss occurred.
  - (2) We do not pay for loss or damage if one or more of the following exclusions apply to the loss. But, if loss by a covered peril results, we do pay for the resulting loss.
    - (a) Errors in Materials and Workmanship. We do not pay for loss caused by an act, defect, error or omission (negligent or not) relating to:
      - (i) Design, specifications, construction or workmanship;
      - (ii) Planning, zoning, development, siting, surveying, grading or compaction; or
      - (iii) Maintenance, installation, renovating, remodeling or repair.
    - (b) Electrical Currents. We do not pay for loss caused by arcing or by electrical currents other than lightning.
    - (c) Breakdown. We do not pay for loss caused by any:
      - (i) Structural, mechanical or remodeling process; or
      - (ii) Structural, mechanical or electrical breakdown or malfunction.
    - (d) Settlement, Cracks and Shrinkage. We do not pay for loss caused by settling, cracking, shrinking, bulging or expanding of pavements, foundations, walls, ceiling, glass or roofs.

**4. PROPERTY LIMITS OF INSURANCE**

The Property Limits of Insurance Section is replaced by the following with respect to the coverage provided by this endorsement:

- a. The most we will pay for loss or damage to Property in the Course of Construction in any one occurrence is the Limit of Insurance shown in the Schedule.
- b. The limit applicable to the Fire Department Service Charge Additional Coverage is in addition to the Limit of Insurance.

**5. PROPERTY OPTIONAL COVERAGES**

The Property Optional Coverages do not apply to Property in the Course of Construction.

**6. PROPERTY DEDUCTIBLES**

Property Deductibles is replaced by the following only with respect to Property in the Course of Construction:

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the deductible amount shown in the Schedule. We will then pay the amount of loss or damage in excess of the deductible.

In the event that loss or damage occurs to Covered Property at more than one *covered job site*, the deductible will be applied only once.

**7. PROPERTY GENERAL CONDITIONS**

- a. The following are added:

- (1) **When Coverage Ceases.**

Coverage will cease under this endorsement according to the following:

Coverage for Property in the Course of Construction will end when one of the following first occurs:

- (a) The *covered property* is accepted by the purchaser;
- (b) The *covered property* is occupied for its intended use;
- (c) The *covered property* has been completed for more than 90 days;
- (d) This policy expires or is cancelled;
- (e) Your interest in the *covered property* ceases; or
- (f) You abandon construction with no intent to complete the work.

- (2) **Premium Audit**

- (a) The premium shown for this endorsement in the Declarations is a deposit premium only and is based on the Premium Basis Estimate and the Rate shown in the Schedule. When this coverage expires or is cancelled, we will compute the

earned premium based on the actual exposure for the premium basis. The larger of the premium computed above and the minimum premium shown in the Schedule is the final earned premium for this endorsement. If a premium payment is due, we will send notice to the First Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the deposit premium paid for the policy period is greater than the earned premium, we will return the excess to the First Named Insured.

- (b) You must keep records of the information we need for premium computation and send us copies at such times as we may request.

- b. Paragraph b of Property General Condition 2 Mortgageholders is replaced by the following:

We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Schedule in their order of precedence, as interests may appear.

**8. PROPERTY LOSS CONDITIONS**

- a. Property Loss Condition 2, Appraisal, is replaced by the following, but only with respect to the Soft Costs and Rental Income Coverage provided under this endorsement:

**Appraisal - Soft Costs and Rental Income**

If you and we do not agree on the amount of the soft cost expenses or loss of rental income, then an appraisal of these amounts may be made if both parties agree to the appraisal.

In this event, each will select a competent, independent appraiser and notify the other of the appraisers identity within 20 days of agreeing to the appraisal. The two appraisers will select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the property is located to select an umpire.

The appraisers will determine and state separately the incurred soft cost expenses and loss of rental income. If the appraisers submit a written report of any agreement to us, the amount agreed upon will be the amount of the loss. If the appraisers fail to agree within a reasonable time, they will submit only their differences to the umpire. Written agreement

so itemized and signed by any two of these three sets the amount of loss.

Each appraiser will be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire will be paid equally by you and us.

Appraisals are not binding. Any decision may be appealed to a court of competent jurisdiction.

- b. The following are added to Property Loss Condition 3, Duties in the Event of Loss or Damage, and apply only to the Soft Costs and Rental Income Coverage provided under this endorsement:

- (1) Due Diligence. We pay only for soft cost expenses or loss of rental income during the period of time that would be required with due diligence and dispatch to rebuild or restore the damage covered property with materials of like kind and quality. You must do everything reasonably possible to minimize soft cost expenses and loss or rental income.
- (2) Interference and Access. You must minimize any interference with the construction schedule to avoid or reduce any resulting *delay*.

You must also allow us access to the covered property so that we can negotiate with the contractors, manufacturers, suppliers or other involved parties so we can:

- (a) Establish the cause and extent of the loss to covered property, soft cost expenses and loss of rental income; and
- (b) Determine and suggest methods to minimize or avoid the *delay* in construction, repairing, remodeling or renovation.

- c. The following is added to Property Loss Condition 5, Loss Payment and Valuation:

- (1) The value of Buildings Under Construction will be based on the replacement cost without any deduction for depreciation.

The replacement cost is limited to the cost of repair or replacement with similar materials on the same site and used for the same purpose. The payment shall not exceed the amount you spend to repair or replace the damaged or destroyed property.

- (2) The value of Installation Projects will be based on the lesser of the following amounts:
  - (a) The actual cost to repair, replace or rebuild the covered property with materials of like kind and quality. The actual cost may include material, labor and reasonable overhead expenses; or
  - (b) The amount you actually spend to repair, replace or rebuild the covered property.
- (3) Expenses and Income. We pay only soft cost expenses and loss of rental income incurred within 12 consecutive months after the loss to Buildings Under Construction or Installation Projects.

## 9. PROPERTY DEFINITIONS

The following definitions are added:

- a. "*Covered job site*" means any location, job site or project where you are in the process of construction or installation.
- b. "*Delay*" means a delay in the construction, erection or fabrication of Buildings Under Construction or Installation Projects.

## SCHEDULE

Limit of Insurance: \$5,000,000

Deductible: \$500

Premium Basis	Estimate	Rate
Payroll Plus 50% of the Cost of Subcontracted Work	\$721,861	\$4.650 Per \$1,000

Minimum Premium = \$50

**CONTRACTOR'S EQUIPMENT****CB-7105(6-13)**

This endorsement modifies insurance provided under the following:

DELUXE BIS-PAK PROPERTY COVERAGE FORM

The following provisions apply to the coverage provided by this endorsement:

**1. COVERAGE**

- a. The first paragraph under the Property Coverages Section is replaced by the following:

We will pay for direct physical loss of or damage to Covered Property within the coverage territory caused by or resulting from any Covered Cause of Loss.

**b. Covered Property**

Paragraph 1, Covered Property, under the Property Coverages Section is replaced by the following:

In this endorsement, covered property refers to one or more classes of property as described below:

- (1) **Scheduled Contractor's Equipment** - We cover only those described items for which a coverage amount is shown in the Schedule. It is a condition that at the time this coverage is effective, all described items are in sound condition.
- (2) **Unscheduled Contractor's Equipment** - We cover tools and other contractor's equipment owned by you and used in your business. We cover only tools and equipment which are in sound condition at the time this coverage is effective.
- (3) **Rented Tools and Equipment**  
We cover contractor's tools and equipment rented from others that are in your care, custody or control and used in your business.
- (4) **Employees' Tools**  
We cover employees' tools which are used in connection with your business.

**c. Extensions of Coverage**

- (1) We also cover contractor's equipment acquired during the policy period for up to 30 days after each item is acquired. This extension applies only to items of contractor's equipment which have a value of more than \$2000. You must provide us with a complete description of each item within this 30 day period and pay the additional premium.  
We cover these items for their actual cash value. The most that we will pay for all such items will be twenty-five percent of the total coverage amount for all described items.

Coverage for each item acquired will end at the earliest of the following:

- (a) When the newly acquired item is reported to us;
  - (b) The end of the 30-day reporting period; or
  - (c) The expiration date of this policy.
- (2) We also cover contractor's equipment which you borrow from others while such equipment is in your care, custody and control and being used in your business. We cover these items for their actual cash value. The most we will pay in one occurrence for loss or damage to borrowed contractors' equipment is twenty-five percent of the total coverage amount for all covered property under this endorsement.

**d. Property Not Covered**

Paragraph 2, Property Not Covered, under the Property Coverages Section is replaced by the following:

We do not cover:

- (1) Property that is not in sound condition when this coverage is effective;
- (2) Property that you rent or lease to others;
- (3) Property that is waterborne. We do cover property that is in transit on a regular ferry, lighter or carfloat;
- (4) Property that is underground, in caissons or underwater;
- (5) Property that is or will be a permanent part of a building or structure;
- (6) Plans, blueprints, designs or specifications;
- (7) Self-propelled vehicles that are designed for highway use;
- (8) Aircraft;
- (9) Watercraft;
- (10) Tires and tubes mounted on vehicles. We do cover tires and tubes mounted on covered vehicles, if the loss is caused by:
  - (a) Fire, windstorm, theft or vandalism;
  - (b) A Covered Cause of Loss which also damages the vehicle.

**e. Covered Causes of Loss**

Paragraph 3, Covered Causes of Loss, under the Property Coverages Section is replaced by the following:

- (1) Except for booms that exceed 25 feet

in length, we cover direct physical loss to covered property unless the loss is excluded. The loss must be due to an external cause.

- (2) For booms that exceed 25 feet in length, we cover direct physical loss to this property caused only by fire; lightning; windstorm; hail; earthquake; flood; smoke; explosion; aircraft, spacecraft, self-propelled missiles and objects that fall from these items; vehicles, including an accident to a transporting vehicle; strike; riot; civil commotion; vandalism; theft; attempted theft; sprinkler leakage; collapse of buildings and the upset or overturn of the unit of which the boom is a part, or the collision of the unit with another object.

## 2. EXCLUSIONS

The Property Exclusions Section is replaced by the following:

We do not pay for a loss if one or more of the following excluded causes of loss apply to the loss, regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded cause of loss. We do not pay for a loss that results from:

- a. A dishonest or illegal act, alone or in collusion with another, by:
  - (1) You;
  - (2) Others who have an interest in the property;
  - (3) Others to whom you entrust the property; or
  - (4) The employees or agents of (1), (2) or (3), whether or not they are at work.

We do cover loss caused by dishonest acts by carriers or other bailees for hire.

- b. Mysterious disappearance;
- c. Any cause when the only proof that a loss occurred is an inventory shortage;
- d. Dampness of atmosphere;
- e. Extremes of temperature;
- f. Corrosion or rust;
- g. Pitting;
- h. Mechanical breakdown or failure. If a fire or explosion results, we do cover the loss caused by the fire or explosion;
- i. Electrical currents, other than those caused by lightning, that damage an electrical apparatus or its wiring. If a fire or explosion results, we do cover the loss caused by the fire or explosion;

- j. A process to repair, adjust, service or maintain the covered property. If a fire or explosion results, we do cover the loss caused by the fire or explosion;
- k. The weight of a load when it exceeds the designed capacity of a machine to lift or support the load from any position;
- l. Wear and tear to covered property;
- m. Gradual deterioration of covered property;
- n. A fault or weakness that is intrinsic to the property which causes it to break, spoil, become defective or destroy itself;
- o. Damage caused by nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals to covered property;
- p. Obsolescence or depreciation of covered property;
- q. War. This means:
  - (1) Declared war, undeclared war, civil war, insurrection, rebellion or revolution;
  - (2) A warlike act by a military force or by military personnel;
  - (3) The destruction, seizure or use of the property for a military purpose; or
  - (4) The discharge of a nuclear weapon even if it is accidental.
- r. Civil authority. This means:
  - (1) Seizure or destruction under quarantine or customs regulations;
  - (2) Confiscation or destruction by order of a government or public authority; or
  - (3) Risks of contraband or illegal transportation or trade.
- s. Nuclear hazard. This means nuclear reaction, nuclear radiation or radioactive contamination:
  - (1) Whether controlled or uncontrolled; or
  - (2) Caused by, contributed to or aggravated by a cause of loss covered by this policy. A loss caused by nuclear hazard will not be considered to be a loss caused by fire, explosion or smoke. If fire is covered by this policy, we do cover the loss caused by a fire that results from the nuclear hazard.

We do not pay for such excluded loss even if the following contribute to, aggravate or cause the loss:

- a. The act or decision of a person, group, organization or governmental body. This includes the failure to act or decide.
- b. A fault, defect or error, negligent or not, in:
  - (1) Planning, zoning, surveying, siting,

grading, compacting, land use or development of property.

- (2) The design, blueprint, specification, workmanship, construction, renovation, remodeling or repair of property. This includes the materials needed to construct, remodel or repair the property.

- (3) Maintenance of property.

These apply whether or not the property is covered by this policy.

c. A condition of the weather.

d. The collapse of a building or structure.

### 3. DEDUCTIBLE

The Property Deductibles Section is replaced by the following:

The deductible amounts shown in the Schedule will apply separately to each class of covered property for loss or damage in any one occurrence after all other adjustments have been made. When the occurrence involves loss or damage to multiple items within Scheduled Contractor's Equipment, then the highest deductible amount applicable to the lost or damaged items will be deducted from the total amount of loss or damage to those items. We will then pay the amount of loss or damage in excess of the applicable deductible up to the coverage amount shown in the schedule.

### 4. LIMITS OF INSURANCE

The Property Limits of Insurance Section is replaced by the following:

#### a. Scheduled Contractor's Equipment

The most we will pay for loss to any one item of Scheduled Contractor's Equipment is the coverage amount shown in the Schedule for that item.

#### b. Unscheduled Contractor's Equipment

Subject to a maximum of \$2,500 per item, the most we will pay for all loss or damage in one occurrence is the coverage amount for Unscheduled Contractor's Equipment shown in the Schedule.

#### c. Rented Tools and Equipment

The most we will pay for all loss or damage in one occurrence is the Rented Tools and Equipment coverage amount shown in the Schedule.

#### d. Employees' Tools

The most we will pay for all loss or damage in one occurrence is the Employees' Tools coverage amount as described in the Schedule.

### 5. CONDITIONS

#### a. The Coverage Territory Property General

Condition is replaced by the following:

Coverage applies only while the property is in the United States, Canada or Puerto Rico. This includes property that is in transit except to or from Alaska, Hawaii or Puerto Rico.

#### b. The following condition is added:

Coinsurance

- (1) You must maintain a minimum coverage amount for each described item of Scheduled Contractor's Equipment. This minimum coverage amount is the full value of the described item. If the coverage amount at the time of loss is less than the minimum coverage amount, we will pay only a part of a loss. Our part of the loss will be determined by dividing the coverage amount by the minimum coverage amount. This percentage will be applied to the final adjusted loss to determine the amount that we will pay.

- (2) You must maintain a minimum coverage amount for Unscheduled Contractor's Equipment. This minimum coverage amount is the full value of all covered unscheduled equipment. If the coverage amount at the time of loss is less than the minimum coverage amount, we will pay only a part of a loss. Our part of the loss will be determined by dividing the coverage amount by the minimum coverage amount. This percentage will be applied to the final adjusted loss to determine the amount that we will pay.

#### (3) Rented Tools and Equipment

You must maintain a minimum coverage amount for Rented Tools and Equipment. This minimum coverage amount is the full value of all covered Rented Tools and Equipment. If the coverage amount at the time of loss is less than the minimum coverage amount, we will pay only a part of a loss. Our part of the loss will be determined by dividing the coverage amount by the minimum coverage amount. This percentage will be applied to the final adjusted loss to determine the amount that we will pay.

### 6. VALUATION

The following is added to the Loss Payment and Valuation provision under Property Loss Conditions:

We will determine the value of Covered Property using the Basis for Valuation shown in the Schedule.

**7. SCHEDULE**

The following items do not apply to the coverage provided by this endorsement:

a. The Additional Coverages under the Prop-

erty Coverages Section; and

b. The Property Extensions of Coverage Section.

**SCHEDULE****Scheduled Contractor's Equipment**

<b>Deductible Amount</b>	<b>Items to Which the Deductible Applies</b>
\$ 500	2014 S570 SKID STEER
500	2000 10054
500	2009 84" SWEEPER
500	4X12 WORK PLATFORM
500	HYDRAULIC HAMMER
500	SKID STEER 310
500	2014 NS 5.7 HP 80 GAL
	AIR COMPRESSOR
500	2013 CONCRETE SAW 16"
500	2014 SKID LOADER GRAPPLE
	BUCKET
500	JACK HAMMER
500	HAMMER DRILL
500	2014 8' SNOW BUCKET
500	8' SNOW BUCKET SKID
	LOADER
500	WELDING TORCH
500	SCAFFOLDING
500	SHOOT
500	GAS GENERATOR 9000TB
500	GAS GENERATOR 900TBM

<b>Described Item</b>	<b>Manufacturer / Serial Number</b>	<b>Basis for Valuation</b>	<b>Coverage Amount</b>
2014 S570 SKID STEER	BOBCAT ATDZ13786	Actual Cash Value	\$ 55,650
2000 10054	SKY TRAK 12990	Actual Cash Value	58,773
2009 84" SWEEPER	BOBCAT	Actual Cash Value	2,393
4X12 WORK PLATFORM		Actual Cash Value	2,332
HYDRAULIC HAMMER	ESCO	Actual Cash Value	2,200
SKID STEER 310	BOBCAT	Actual Cash Value	2,000
2014 NS 5.7 HP 80 GAL AIR COMPRESSOR		Actual Cash Value	2,141
2013 CONCRETE SAW 16"	STIL	Actual Cash Value	2,120
2014 SKID LOADER GRAPPLE BUCKET		Actual Cash Value	1,900
JACK HAMMER	DEWALT	Actual Cash Value	1,500
HAMMER DRILL	HILT	Actual Cash Value	1,352
2014 8' SNOW BUCKET		Actual Cash Value	1,272
8' SNOW BUCKET SKID LOADER		Actual Cash Value	1,000
WELDING TORCH		Actual Cash Value	2,608
SCAFFOLDING		Actual Cash Value	4,175
SHOOT		Actual Cash Value	9,473
GAS GENERATOR 9000TB		Actual Cash Value	2,040

Described Item	Manufacturer / Serial Number	Basis for Valuation	Coverage Amount
GAS GENERATOR 900TBM	2864	Actual Cash Value	1,680

#### Unscheduled Contractor's Equipment

Deductible: \$500  
Coverage Amount: \$10,000 with a \$2,500 maximum for any one item  
Basis for Valuation: Actual Cash Value

#### Rented Tools and Equipment

Deductible: \$500  
Coverage Amount: \$100,000  
Basis for Valuation: Actual Cash Value

### ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

CB-7332(5-13)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

1. Who Is An Insured is amended to include as an additional insured:
  - a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
  - b. Any other person or organization you are required to add as an additional insured under the contract or agreement described in paragraph a above.

Such person or organization is an additional insured only with respect to liability for *bodily injury, property damage or personal and advertising injury* caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured. A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

2. With respect to the insurance afforded these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

- a. *Bodily injury, property damage or personal and advertising injury* arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - (1) The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (2) Supervisory, inspection, architectural or engineering activities.
- b. *Bodily injury or property damage* occurring after:
  - (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  - (2) That portion of *your work* out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

**CONDITIONAL EXCLUSION OF TERRORISM (RELATING TO DISPOSITION OF FEDERAL TERRORISM RISK INSURANCE ACT)**

CB-0564(1-15)

This endorsement modifies insurance provided under the following:

**BIS-PAK COVERAGE PART**

- A. The Bis-Pak Property Coverage Form and the Bis-Pak Business Liability and Medical Expenses Coverage Form are amended as follows:

**1. Applicability Of The Provisions Of This Endorsement**

- a. The provisions of this endorsement will become applicable commencing on the date when any one or more of the following first occurs. But if your policy (meaning the policy period in which this endorsement applies) begins after such date, then the provisions of this endorsement become applicable on the date your policy begins.

- (1) The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act, has terminated with respect to the type of insurance provided under this Coverage Form; or
- (2) A renewal, extension or replacement of the Program has become effective without a requirement to make terrorism coverage available to you and with revisions that:
  - (a) Increase our statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all certified terrorism losses we must pay in a calendar year, before the federal government shares in subsequent payment of certified terrorism losses.); or
  - (b) Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or
  - (c) Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.

- b. If the provisions of this endorsement become applicable, such provisions:

- (1) Supersede any terrorism endorsement already endorsed to this policy that addresses *certified acts of terrorism* and/or *other acts of terrorism*, but only with respect to loss or injury or damage from an incident(s) of terrorism (however defined) that occurs on or after the date when the provisions of this endorsement become applicable; and
- (2) Remain applicable unless we notify you of changes in these provisions, in response to federal law.

- c. If the provisions of this endorsement do NOT become applicable, any terrorism endorsement already endorsed to this policy, that addresses *certified acts of terrorism* and/or *other acts of terrorism*, will continue in effect unless we notify you of changes to that endorsement in response to federal law.

2. The following definition is added and applies under this endorsement wherever the term terrorism is shown in italics.

"*Terrorism*" means activities against persons, organizations or property of any nature:

- a. That involve the following or preparation for the following:
  - (1) Use or threat of force or violence; or
  - (2) Commission or threat of a dangerous act; or
  - (3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
- b. When one or both of the following applies:
  - (1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - (2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

**B. The Property Coverage Form is amended as follows:**

**1. The following exclusion is added:**

**EXCLUSION OF TERRORISM**

We will not pay for loss or damage caused directly or indirectly by *terrorism*, including action in hindering or defending against an actual or expected incident of *terrorism*. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. But this exclusion applies only when one or more of the following are attributed to an incident of *terrorism*:

- a. The *terrorism* is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
- c. The *terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials; or
- e. The total of insured damage to all types of property in the United States, its territories and possessions, Puerto Rico and Canada exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the *terrorism* and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions. Multiple incidents of *terrorism* which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold is exceeded.

With respect to this Item 1e, the immediately preceding paragraph describes the threshold used to measure the

magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of *terrorism*, there is no coverage under this Coverage Form.

**2. Exception Covering Certain Fire Losses**

The following exception to the Exclusion Of Terrorism applies only if indicated and as indicated in the Schedule of this endorsement.

If *terrorism* results in fire, we will pay for the loss or damage caused by that fire, subject to all applicable policy provisions including the Limit of Insurance on the affected property. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverages or endorsements that apply to those coverages.

**3. Application Of Other Exclusions**

When the Exclusion Of Terrorism applies in accordance with the terms of Paragraph 1a or 1b, such exclusion applies without regard to the Nuclear Hazard Exclusion in this Coverage Form.

**C. The Business Liability and Medical Expenses Coverage Form is amended as follows:**

- 1. The following definition is added and applies under this endorsement wherever the phrase any injury or damage, is shown in italics:**

*"Any injury or damage"* means any injury or damage covered under this Coverage Form or any applicable endorsement, and includes but is not limited to *bodily injury, property damage, personal injury, advertising injury or personal and advertising injury*, as may be defined under this Coverage Form or any applicable endorsement.

- 2. The following exclusion is added:**

**EXCLUSION OF TERRORISM**

We will not pay for *any injury or damage* caused directly or indirectly by *terrorism*, including action in hindering or defending against an actual or expected incident of *terrorism*. *Any injury or damage* is excluded regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage. **But this exclusion applies only when one or more of the following are attributed to an incident of *terrorism*:**

- a. The *terrorism* is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
- b. Radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
- c. The *terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- d. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials; or
- e. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the *terrorism* and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
- f. Fifty or more persons sustain death or serious physical injury. For the pur-

poses of this provision, serious physical injury means:

- (1) Physical injury that involves a substantial risk of death; or
- (2) Protracted and obvious physical disfigurement; or
- (3) Protracted loss of or impairment of the function of a bodily member or organ.

Multiple incidents of *terrorism* which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraph 2e or 2f are exceeded.

With respect to this Exclusion, Paragraphs 2e and 2f describe the threshold used to measure the magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of *terrorism*, there is no coverage under this Coverage Form.

- D. The following provision is added to the Bis-Pak Property Coverage Form and the Bis-Pak Business Liability and Medical Expenses Coverage Form:

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for loss or injury or damage that is otherwise excluded under this Policy.

#### SCHEDULE

##### The Exception Covering Certain Fire Losses (Paragraph B2) applies to property located in the following states:

Illinois  
Iowa  
Maine  
Missouri  
Wisconsin

#### SNOW PLOW PRODUCTS - COMPLETED OPERATIONS HAZARD COVERAGE

CB-1416(1-10)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

The following exception is added to Exclusion 1g Aircraft, Auto or Watercraft:

This exclusion does not apply to *bodily injury* or *property damage* that:

- (a) Is included in the *products-completed operations hazard*; and
- (b) Arises out of the use of any *auto* for snow or ice removal operations.

**SOUTH DAKOTA CHANGES****CB-7079(10-11)**

This endorsement modifies insurance provided under the following:

**BIS-PAK COVERAGE PART**

1. The following exclusion is added to Exclusions of the Bis-Pak Business Liability and Medical Expenses Coverage Form:

This insurance does not apply to punitive or exemplary damages.

2. The Legal Action Against Us Loss Condition of the Bis-Pak Business Liability and Medical Expenses Coverage Form is replaced by the following:

**Legal Action Against Us**

No person or organization has a right under this policy to join us as a party or otherwise bring us into a *suit* asking for damages from an insured.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

3. Paragraph 2 of the Cancellation Bis-Pak Common Policy Condition is replaced by the following:

We may cancel this policy by mailing or delivering to the First Named Insured written notice of cancellation at least 20 days before the date cancellation takes effect.

- a. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason.
- b. When this policy has been in effect for 60 days or more or if it is a renewal with us, we may not cancel unless it is based upon at least one of the following reasons:
  - (1) Nonpayment of premium;
  - (2) Discovery of fraud or material misrepresentation made by or with the knowledge of the Named Insured in obtaining the policy, continuing the policy or in presenting a claim under the policy;
  - (3) Discovery of acts or omissions on the part of the Named Insured which increase any hazard insured against;
  - (4) The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued;
  - (5) A violation of any local fire, health,

safety, building or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;

- (6) A determination by the Director of Insurance that the continuation of the policy would jeopardize our solvency or would place us in violation of the insurance laws of this state; or
- (7) A violation or breach of any policy terms or conditions by the insured.

4. Paragraph 5 of the Cancellation Bis-Pak Common Policy Condition is replaced by the following:

If this policy is cancelled, we will send the First Named Insured any premium refund due. If we cancel, the refund will be computed pro rata. If the First Named Insured cancels, the refund will be computed at 90% of pro rata. The cancellation will be effective even if we have not made or offered a refund.

5. The When We Do Not Renew Bis-Pak Common Policy Condition is replaced by the following:

**NONRENEWAL**

If we decide not to renew this policy, we will mail or deliver to the First Named Insured written notice of nonrenewal not less than 60 days before:

1. The expiration date; or
2. The anniversary date if this is a continuous policy.

Any notice of nonrenewal will be mailed or delivered to the First Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

6. The Appraisal Property Loss Condition is replaced by the following:

If we and you do not agree on the amount of loss, then an appraisal of the loss may be made if both parties agree to the appraisal. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of loss. If they fail to agree, they will submit their differences to the umpire. It is agreed that a decision agreed to by any two shall be the appraised amount of loss. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal

and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

Appraisals are not binding. Any decision may be appealed to a court of competent jurisdiction.

7. The Legal Action Against Us Property Loss Condition is replaced by the following:

**Legal Action Against Us**

No one may bring a legal action against us under this insurance unless the action is brought within six years after the date on which the direct physical loss or damage occurred.

8. Paragraph (1) of Additional Condition F4d, Legal Action Against Us, in the Mortgageholder's Errors and Omissions Coverage Form is replaced by the following:

- (1) No one may bring a legal action against us under Coverages A and B unless the action is brought within six years after you discover the error or accidental omission.

9. The following is added to the Loss Payment and Valuation Property Loss Condition:

**h. Valued Policy Provision**

- (1) When this policy insures any real property in South Dakota against loss by fire, tornado or lightning and the property insured is wholly destroyed by fire, tornado or lightning, without criminal fault on the part of you or your assignee, the amount of the insurance written on such real property shall be taken conclusively to be the true value of the property insured and the true amount of loss and measure of damages, subject to the exceptions and conditions in paragraphs 8h(2) through 8h(6) below.
- (2) The Valued Policy Provision, paragraph 8h(1) above, does not apply to a fire loss which occurs less than 90 days after:
  - (a) The policy was initially issued; or
  - (b) The amount of insurance on the destroyed property was increased

by 25% or more at the insured's request.

However, the Valued Policy Provision applies if the amount of insurance was increased:

- (a) In accordance with an inflation adjustment option; or
  - (b) As a consequence of upgrading coverage to a replacement cost basis, provided there is a written agreement between you and us that the policy will be written on a valued basis.
- (3) Builders' Risk policies of insurance covering property in the process of being constructed shall be valued and settled according to the actual value of that portion of the construction completed at the time of the fire, tornado or lightning loss.
  - (4) Property in the process of being newly constructed, for the purpose of serving as a residence, shall be valued and settled according to the terms and conditions of the policy for valuation of that portion of the construction completed at the time of the fire, tornado or lightning loss.
  - (5) If two or more policies are written upon the same property interest and cover the fire, tornado or lightning loss, each insurer will pay only that proportion of the cost of the loss that the limit of liability under its policy bears to the total amount of insurance covering the loss.
  - (6) The Valued Policy Provision, paragraph 8h(1) above, does not apply to any claim for total loss to any building which is insured under a blanket form or endorsement with one Limit of Insurance applicable to two or more buildings. Any claim for total loss to a building insured on such blanket basis will be settled at actual cash value, depending on the policy provisions applicable to the building.

**CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM - LIABILITY**

**CB-7299(1-15)**

This endorsement modifies insurance provided under the following:

**BIS-PAK COVERAGE PART**

The following provisions are added and apply to Property and Liability Coverages if applicable:

**Cap On Certified Terrorism Losses**

*"Certified act of terrorism"* means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a *certified act of terrorism* include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**EXCLUSION OF PUNITIVE DAMAGES RELATED TO A CERTIFIED ACT OF TERRORISM**

**CB-7298(1-15)**

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

**A.** The following exclusion is added:

This insurance does not apply to:

**TERRORISM PUNITIVE DAMAGES**

Damages arising, directly or indirectly, out of a *certified act of terrorism* that are awarded as punitive damages.

**B.** The following definition is added:

"*Certified act of terrorism*" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a *certified act of*

*terrorism* include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
  2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- C.** The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Policy.

**DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT**

IL-7082(1-15)

THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.

**A. Disclosure Of Premium**

In accordance with the federal Terrorism Risk Insurance Act, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under the Terrorism Risk Insurance Act. The portion of your premium attributable to such coverage is shown in the policy Declarations.

**B. Disclosure Of Federal Participation In Payment Of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals a percentage of that portion of the amount of such insured losses that exceeds the applicable insurer retention. The

federal share percentage is 85% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019; and 80% beginning on January 1, 2020. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

**C. Cap On Insurer Participation In Payment Of Terrorism Losses**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR  
PERSONAL INFORMATION AND DATA-RELATED LIABILITY -  
WITH LIMITED BODILY INJURY EXCEPTION**

**CB-1504(5-14)**

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL  
EXPENSES COVERAGE FORM

**A.** Exclusion 1s is replaced by the following:

This insurance does not apply to:

**s.** Access Or Disclosure Of Confidential Or  
Personal Information And Data-related Li-  
ability

- (1) Damages, other than damages because of *personal and advertising injury*, arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of non-public information; or
- (2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in paragraph (1) or (2) above.

However, unless paragraph (1) above applies, this exclusion does not apply to damages because of *bodily injury*.

As used in this exclusion, electronic data means information, facts or computer pro-

grams stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

**B.** The following is added to Exclusions 1p:

This insurance does not apply to:

**p.** Personal And Advertising Injury

*Personal and advertising injury:*

Arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

**EXCLUSION - HABITATIONAL EXTERIOR FINISH SYSTEMS****CB-7237(8-12)**

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

1. The following exclusion is added:

This insurance does not apply to *bodily injury* or *property damage* included in the *Products-completed operations hazard* or to *personal and advertising injury* arising out of:

- a. The design, manufacture, sale, service, handling, construction, fabrication, preparation, installation, application, maintenance, disposal or repair, including remodeling, service, correction or replacement of an *exterior finish system* or any part thereof;
- b. The application or use of conditioners, primers, accessories, flashing, coatings, caulking or sealant in connection with an *exterior finish system*;
- c. Any method or procedure used to correct problems with an installed or partially installed *exterior finish system*; or
- d. Any work or operations performed on or to an *exterior finish system* or any component thereof or on or to a building or structure to which an *exterior finish system* attaches that results, directly or indirectly, in the intrusion of water or moisture, including any resulting fungus, mold, mildew, virus or bacteria and any mycotoxins, spores, scents or byproducts thereof, into or on any part of the building or structure on which you performed such work or operations.

This exclusion applies only if the *exterior finish system* is or was attached to a building or structure used solely for *habitational* purposes.

This exclusion applies to *bodily injury*, *property*

*damage*, *personal and advertising injury*:

- a. Arising out of work or operations, as described in 1 above, whether performed by you or on your behalf.
  - b. For which you assume liability in a contract or agreement, regardless of whether such contract or agreement is an *insured contract*.
2. The following is added to Liability and Medical Expenses Definitions:
- a. "*Exterior finish system*" includes, but is not limited to, an exterior insulation and finish system (EIFS), direct-applied exterior finish system (DEFS), synthetic stucco or similar system that is an exterior cladding or finish system used on a building or structure consisting of:
    - (1) A rigid or semi-rigid insulation board made of expanded polystyrene or other materials or a rigid or semi-rigid substrate;
    - (2) The adhesive and/or mechanical fasteners used to attach the insulation board to substrate or the substrate to the structure including any water-durable exterior wall substrate;
    - (3) A reinforced or unreinforced base coat or mesh;
    - (4) A finish coat providing surface texture to which color may be added; and
    - (5) Any flashing, caulking or sealant used with the system for any purpose.
  - b. "*Habitational*" means single or multifamily housing, including apartments, condominiums, townhouses or planned unit developments.

**ASBESTOS EXCLUSION****IL-7012(3-14)**

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSE COVERAGE FORM

COMMERCIAL AUTO COVERAGE PART

COMMERCIAL GENERAL LIABILITY COVERAGE PART

DIRECTORS' AND OFFICERS' LIABILITY COVERAGE PART

EMPLOYEE BENEFITS LIABILITY COVERAGE PART

ERRORS AND OMISSIONS COVERAGE PART

GARAGE COVERAGE FORM

LIQUOR LIABILITY COVERAGE FORM

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM

POLLUTION LIABILITY COVERAGE FORM

PRODUCT WITHDRAWAL COVERAGE PART

PRODUCTS-COMPLETED OPERATIONS LIABILITY COVERAGE FORM

RAILROAD PROTECTIVE LIABILITY COVERAGE FORM

The following exclusion is added:

**Asbestos**

This insurance does not apply to any *bodily injury* or *property damage* arising out of activities related to, but not limited to, manufacture, mining, storage, distribution, installation, sale, use, exposure to, service, testing for, repair, containment or removal of asbestos, asbestos fibers, asbestos dust, or products containing asbestos.

**VOLUNTARY PROPERTY DAMAGE - BIS-PAK****CB-7068(8-06)**

This endorsement modifies insurance provided under the following:

**BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM**

1. With respect to the insurance provided under this endorsement, the following apply:
  - a. Exclusion 1k(4) is replaced by the following:
    - (4) Personal property of others:
      - (a) Held by the insured for servicing, repair, storage or sale at premises owned, occupied or rented to the insured.
      - (b) Caused by the ownership, maintenance, use, loading or unloading of any auto, watercraft, or transportation of property by any means.
  - b. Exclusion 1k(5) is deleted.
2. The insurance provided by this endorsement is subject to the following provisions:
  - a. We will pay for *property damage* at your request even if you are not legally liable, if it is otherwise subject to this endorsement.
  - b. *Property damage* does not include loss of use if personal property of others is not physically injured.
  - c. **Limits**  
The most we will pay for an *occurrence* under this endorsement is the amount listed in the Schedule as the *occurrence* limit.

The most we will pay for the sum of all amounts paid under this endorsement is the amount listed in the Schedule as the aggregate limit.

The Liability and Medical Expenses Limit and the Aggregate Limits do not apply to the insurance provided under this endorsement.

**d. Settlement**

If you make any repairs to property damaged, at our request, we will pay the larger of your actual cost or 75% of your usual charge for the necessary labor and materials. Any property paid for or replaced by us may become our property at our option. Any payment made under this endorsement shall not be interpreted as an admission of liability by the insured or the company.

**e. Deductible**

Our obligation to pay for a covered loss applies only to the amount of loss in excess of \$100. The limit of liability applicable to an *occurrence* will be reduced by the amount of that deductible.

**f. Other Insurance**

The insurance provided by this endorsement is excess over any other insurance carried by the insured which applies to a loss covered by this endorsement.

**SCHEDULE**

<u>Occurrence Limit</u>	<u>Aggregate Limit</u>
\$5,000	\$10,000

**BUSINESS LIABILITY COVERAGE - PROPERTY DAMAGE LIABILITY DEDUCTIBLE (PER CLAIM BASIS)**

CB-0703(1-97)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

1. Our obligation under Liability and Medical Expenses Coverages to pay damages on your behalf because of *property damage* applies only to the amount of damages in excess of the deductible amount shown in the Schedule.
2. The deductible amount shown in the Schedule applies to all damages sustained by any one person or organization because of *property damage* as the result of any one *occurrence*.
3. The terms of this insurance, including those with

respect to:

- a. Our right and duty to defend the insured against any *suits* seeking those damages; and
  - b. Your duties in the event of an *occurrence*, claim, or *suit*;
- apply irrespective of the application of the deductible amount.
4. We may pay any part or all of the deductible amount to effect settlement of any claim or *suit* and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

**SCHEDULE**

**Deductible Amount  
Per Claim**

---

\$250

This deductible applies only with respect to claims emanating from any:

SPRAY PAINTING

PAINTING

**EMPLOYMENT-RELATED PRACTICES EXCLUSION**

CB-0417(7-02)

This endorsement modifies insurance provided under the following:

BIS-PAK BUSINESS LIABILITY AND MEDICAL EXPENSES COVERAGE FORM

The following exclusion is added:

1. This insurance does not apply to *bodily injury* or *personal and advertising injury* to:
  - a. A person arising out of any:
    - (1) Refusal to employ that person;
    - (2) Termination of that person's employment; or
    - (3) Employment-related practices, policies, acts or omissions such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humili-

ation or discrimination directed at that person; or

- b. The spouse, child, parent, brother or sister of that person as a consequence of *bodily injury* or *personal and advertising injury* to that person at whom any of the employment-related practices described in paragraphs (1), (2) or (3) above is directed.
2. The Employment-Related Practices Exclusion applies:
    - a. Whether the insured may be liable as an employer or in any other capacity; and
    - b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**CONTRACTOR'S ENDORSEMENT - ACCOUNTS RECEIVABLE**

**CB-7023(9-04)**

This endorsement modifies insurance provided under the following:

DELUXE BIS-PAK PROPERTY COVERAGE FORM

The following provisions apply to the coverage provided by this endorsement:

**1. COVERAGE**

The Property Coverages section is replaced by the following:

**a. We will pay:**

- (1) All amounts due from your customers that you are unable to collect;
- (2) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
- (3) Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and
- (4) Other reasonable expenses that you incur to re-establish your records of accounts receivable.

that result from direct physical loss or damage by any Covered Cause of Loss to your records of accounts receivable.

**b. Covered Causes of Loss**

We cover direct physical loss to the accounts receivable records unless the loss is excluded. The loss must be due to an external cause.

**2. EXCLUSIONS**

Property Exclusions does not apply to this Coverage except for:

- a.** 1c, Governmental Action;
- b.** 1d, Nuclear Hazard;
- c.** 1f, War and Military Action;
- d.** 2f, Dishonesty;
- e.** 2g, False Pretense;
- f.** 3; and
- g.** 5, Accounts Receivable Exclusion.

**3. LIMIT OF INSURANCE**

The Property Limits of Insurance section is replaced by the following:

The most we will pay for loss or damage in any one occurrence is \$1,000.

- 4.** Property Extensions of Coverage and Property Optional Coverages do not apply.

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SOUTH DAKOTA AUTOMOBILE INSURANCE IDENTIFICATION CARD



Policy Number X87409  
 Policy Period 01-20-16 To 01-20-17  
 Named Insured HULTGREN CONSTRUCTION LLC  
 Your Agency BOEN & ASSOCIATES, INC  
 (605) 336-0425  
 Your Car 04 FORD F450 SUPER DUTY  
 1FDXX47P24EC15274  
 FOR ALL CLAIMS CALL 1-800-242-7666

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 Your Agency BOEN & ASSOCIATES, INC  
 (605) 336-0425  
 Your Car 14 CARRYON 8X24 CARGO TRAILER  
 4YMCL249EM006839  
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 Your Agency BOEN & ASSOCIATES, INC  
 (605) 336-0425  
 Your Car 06 CHEVROLET SILVERADO K2500HD  
 1GCHK23D76F138518  
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S-54(06-01)

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 Your Agency BOEN & ASSOCIATES, INC  
 (605) 336-0425  
 Your Car 15 FORD F150 SUPER CAB  
 1FTEX1EP6FKE75615  
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 1GDP7H1C6XJ505624  
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 5JW1U1211D1070928  
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 Your Agency BOEN & ASSOCIATES, INC  
 (605) 336-0425  
 Your Car 16 BIG TEX 92X20  
 UNKNOWN  
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 16VDX2021G2062116  
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 1FDXF47P44ED25584  
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  4. Do not admit liability, authorize repairs or discuss the accident with anyone except a known ACUTY representative or the police. One card must be carried in the vehicle at all times, and the other card may be needed as evidence in court.
- The policy meets the minimum liability limit prescribed by South Dakota law.



**IF YOU HAVE AN ACCIDENT OR LOSS**

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S-54(06-01)

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# Your Policyholder Identification Cards

SOUTH DAKOTA AUTOMOBILE INSURANCE IDENTIFICATION CARD



Policy Number X87409  
Policy Period 01-20-16 To 01-20-17  
Named Insured HULTGREN CONSTRUCTION LLC  
Your Agency BOEN & ASSOCIATES, INC  
(605) 336-0425  
Your Car Hired and Nonowned Autos

FOR ALL CLAIMS CALL 1-800-242-7666

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Policy Number X87409  
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Your Agency BOEN & ASSOCIATES, INC  
(605) 336-0425  
Your Car Hired and Nonowned Autos

FOR ALL CLAIMS CALL 1-800-242-7666

TO REMOVE: FOLD FORWARD AND BACK ALONG EACH PERFORATION AROUND CARD.

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**KEEP ONE CARD IN YOUR VEHICLE AT ALL TIMES**

S-54(06-01)

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**SCHEDULE 1**

<b><u>CLAIMANT</u></b>	<b><u>CLAIM NUMBER</u></b>	<b><u>AGGREGATE ALLOWED CLAIM AMOUNT</u></b>	<b><u>PRO RATA SHARE OF FUNDS</u></b>
John F. McMahon and Estate of Ethan Thad McMahon, by and through John J. McMahon, Jr., Personal	6-2, 7-2	\$6,500,000	50%
Fodness Family	8-1, 9-1, 10-1	\$6,500,000	50%

**SCHEDULE 2**

<b><u>CLAIMANT</u></b>	<b><u>CLAIM NUMBER</u></b>	<b><u>ALLOWED CLAIM AMOUNT</u></b>	<b><u>PAYMENT AMOUNT</u></b>
MidAmerican Energy	1-1	\$11,483.82	\$2,296.76
IJK, LLC	12-1	\$302,362.75	\$60,472.55
PAve, LLC	13-1	\$12,500.00	\$2,500.00
City of Sioux Falls	14-1	\$57,803.23	\$11,560.65

**SCHEDULE 3**

<b><u>CLAIMANT</u></b>	<b><u>CLAIM NUMBER</u></b>	<b><u>ALLOWED CLAIM AMOUNT</u></b>	<b><u>PAYMENT AMOUNT</u></b>
State Farm	3-1	\$19,738	\$2,240.26
Cincinnati Insurance	5-2	\$4,844,611.95	\$550,008.79